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VOLUME II

CA2 ALZ 1 1969021
Transcript of the Evidence and Proceedings
At a Hearing Before the Commission



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TRANSCRIPT OF THE EVIDENCE AND PROCEEDINGS
AT THE HEARING BEFORE THE COMMISSION TO
INQUIRE INTO THE SUBMISSION OF THE OMBUDSMAN
DATED OCTOBER 10, 1969, HELD IN THE JUBILEE
AUDITORIUM, IN THE CITY OF EDMONTON, PROVINCE
OF ALBERTA, ON JUNE 23, A.D. 1970, TAKEN IN
SHORTHAND BY MARLENE ERTMAN AND R. L'HEUREUX,
OFFICIAL COURT REPORTERS.

THE HON. C. C. McLAURIN,..... COMMISSIONER,
W. A. MCGILLIVRAY, Esq., Q.C.,..... Counsel for the Commission,
J. C. CAVANAGH, Esq., Q.C.,..... Counsel for Mr. R. J.
Philipzyk,
D. H. BOWEN, Esq., Q.C.,..... Counsel for Homer R.
Kellough,
J. E. REDMOND, Esq.,..... Counsel for the Edmonton Real
Estate Board Co-operative
Listing Bureau Limited,
A. B. WEIR, Esq.,..... Counsel for the Ombudsman,
W. ALAN SHORT, Esq.,..... Secretary.

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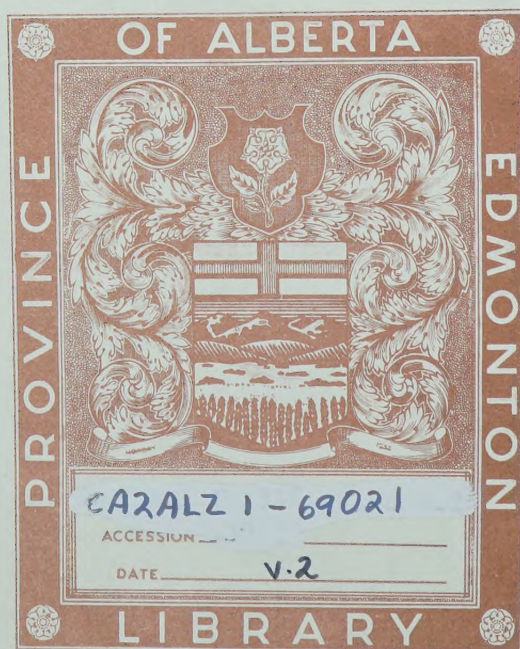


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MR. J. W. HENDERSON

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A. B. WEIR, Esq.,..... Counsel for the Ombudsman,
W. ALAN SHORT, Esq.,..... Secretary.

MR. MCGILLIVRAY: Sir, I would like to call Mr.
MacPhee, Superintendent of Insurance.

JOHN ALEXANDER MacPHEE, sworn, examined by

MR. MCGILLIVRAY:

Q Mr. MacPhee, you are the Superintendent of Insurance
for the Province of Alberta?

A I am, sir.

Q And you reside in Edmonton?

A Yes, sir.

Q How did the Superintendent of Insurance get mixed
up with real estate and real estate agents here?

A Well sir, under the Real Estate Agents Licencing Act,
the Superintendent of Insurance is named as an
official charged with the administration of that act.

Q And as that official charged with the administration
of the Real Estate Agents Licencing Act, it is your
duty to what , licence agents and salesmen to carry
on the business of real estate in this province?

A Yes sir, and to police the industry generally.

Q Mr. MacPhee, there was some discussion yesterday about
the manner of issuing licences, and as I understood
it when a salesman gets licenced he gets licenced to
act as a salesman for a particular licenced real estate

Q (cont) agent?

A That is correct, sir.

Q And if that salesman on his own or indeed if he is let go by his employer, if the salesman on his own leaves that employer, do I understand that his licence then expires?

A Yes sir, it is terminated until he finds another employer.

Q And then you issue him a new licence?

A Yes, if everything is satisfactory.

Q When you say when everything is satisfactory, are you concerned about the background or morals of the salesman?

A Yes sir, we are concerned about the character and integrity of sales personnel licenced by the government.

Q And if someone had a record of fraudulent transactions, might your department not licence him?

A There is quite a possibility, sir, that the matter would be very thoroughly investigated because we don't want anyone in the real estate business under government licence who may perpetrate crimes upon the public.

Q Mr. MacPhee, I believe in your capacity as the administrator or representative of the government

Q (cont) administrating the Real Estate Agents Licencing Act, you were invited to a meeting at which the 1959 supplemental by-laws of the Edmonton Real Estate Board Co-operative Listings Bureau Limited were under discussion?

A Yes sir, I was invited by Mr. Weber, the supervisor of co-operative activities. I was also asked to appear before that meeting by a committee from the Edmonton Real Estate Association which was at that time a group in dissension and opposed to the adoption of these by-laws.

Q I wonder if you would tell the Commissioner what your feeling about these by-laws were and what objections if any you had to them and why?

A Well sir, my position today is precisely the same as it was in 1959 insofar as any points in opposition to these by-laws are concerned. The record of my objection appears in the ombudsman's report and my main objection to the by-laws at that particular time was that they appeared to me to be usurping a particular branch of government that was charged with the supervision or the regulation and control of the real estate business and I protested these by-laws before this meeting of the Alberta or the Edmonton Real Estate Association --

THE COMMISSIONER: You mean insofar as disciplinary aspects of the by-laws are what you opposed?

A Yes sir, I felt that there was an attempt to divide authority and control over the real estate business and that by transferring certain powers from the person charged with the administration of the Real Estate Licencing Act, to the supervisor of co-operative activities that this was eroding my responsibility as Superintendent of Insurance in charge of the administrative division of real estate. I opposed the by-laws on that ground. I also felt that there were certain things in the by-laws, for instance a provision where the by-law said that they were designed to oppose laws detrimental to real estate, and I felt that no by-law adopted by the government should have a provision of that particular nature in it because the government from time to time enacts laws and regulations for the control and the orderly conduct of this particular type of business, so that was another point of my objection, sir.

 I objected very strongly to the, and these objections incidentally were not volunteered by me. I was asked to express opinions on these several points and I did this as an official of the

A (cont) government with the object in view of trying to be helpful, not to be an obstructionist in any way, shape or form, but to try and be helpful and to point out the fears and the concern that I had with some of these by-laws.

Now a great deal has been said about my remarks relating to the power of salesmen in this co-operative organization. The objections that were presented to me by quite a substantial group of licenced realtors or real estate agents in the City of Edmonton when I initially became involved in this problem, I was listening to a protest of people who were licenced under my jurisdiction, and the objection of this particular group and some of these gentlemen are in this room today, sir, was that the power of the large agents over the smaller agents would become so preponderant that the small agent would virtually have no voice in the affairs of the Edmonton Real Estate Board Co-operative Listing Bureau, and on this basis they asked me if something couldn't be done to prevent this particular type of control being exercised by the major real estate offices in the City of Edmonton. At that time, I listened very carefully to the protestations of I would say a very substantial number of agents in the

A (cont) City of Edmonton --

THE COMMISSIONER: Not salesmen?

A Agents, sir, not salesmen, the salesmen came in. Although they may have had power to vote, they had very little to do with the activities of the Edmonton Real Estate Association or the Multiple Listing Bureau as it was at that time, but in order to achieve a result which in my opinion then and in my opinion today, sir, is the result that was achieved; when these by-laws were adopted, salesmen were given the right to vote and I opposed this because I felt that this was an organization of a trade association, an organization of proprietors who could at will influence their salesmen in the matter of voting, and since the numbers of salesmen in the Board were important at the time these by-laws were adopted, I felt that even after the decision had been made to abandon the thought of one salesman one vote, that there was still a possibility where one salesman in 50 could vote. If that one salesman happened to be a member of a large real estate office, he could still be the tail that wagged the dog in a balance of power situation, and I felt that the salesmen should not be accorded a vote at all in what was a trade association of agents because I couldn't see

A (cont) any reason in the world why a co-operative association of agents should be involved with their employees for any other purpose than perhaps to achieve a certain result that I have just explained to you, sir.

Q MR. MCGILLIVRAY: Mr. MacPhee, let me understand you. It has been suggested by the ombudsman in his report that the essence of a co-operative is a democratic principle of one vote per member. As I understand you, you say that as far as this co-operative was concerned, you felt that that was unreasonable and unworkable because if there was a vote for each salesman, you felt that the large firms by dint of the votes that their salesmen would have would mean that they would effectively control the whole organization and that the agents or the smaller agents wouldn't have a voice at all in its operation. Do I understand you correctly?

A You understand me correctly, Mr. McGillivray.

Q And so what they did was give one vote to each agent, that is to each business that joined the Co-operative?

A Yes.

Q And then, sir, you went further than what they did. They wanted to give the salesmen what was described as a courtesy vote and indeed a voice on the Board of

Q (cont) Directors so that they could at least be represented. Your idea was that they shouldn't get a vote at all.

A Precisely, because it was a trade association of agents, not employees.

Q And your attitude was this is an employer/employee relationship between agents and their salesmen and this is an organization of employers to list their property, their assets, namely the listings to pool them and you didn't see any real reason why the salesmen should be brought in at all?

A That is right, sir. That was my position then, still my position.

Q In short, the ombudsman suggest that all salesmen should have an equal vote, the set-up has been that they have a voice but they don't have an equal vote. They can elect as a maximum two directors. Your position is they shouldn't have any vote at all?

A Right, sir. The ombudsman and I differ on that point.

Q Quite so, and you differ from the supervisor of co-operatives who --

A Yes, sir.

Q -- and the real estate board, who tended to somewhat compromise. While they made sure that their employees wouldn't control the company, they at least gave them

Q (cont) a vote.

A Yes, for what purpose I really don't understand besides the one that I mentioned.

Q Well, sir, I put this to you, Mr. MacPhee. On most of our university boards nowadays, the students are given a vote or a representative of the board. Surely they don't control the board, one might say it wasn't too democratic - you may have 5,000 students but they only get one voice or one vote, but at least they have a representative on the board where perhaps their point of view can be presented to the others. Does that strike you as --

A That, Mr. McGillivray, is not the analogy that I would take from this because this is a profit-making institution, the Edmonton Co-operative Listing Bureau, and the university is certainly not a profit institution insofar as the students are concerned.

Q Well, even on that Mr. MacPhee, I wonder if it is fair to say that the board itself is set up to make a profit. The board itself, I suggest sir, is set up to enable the agents to pool their listings and in that way be more effective and make more money for the real estate agent people and indeed give better service to the public, but they also deal in education, ethics and this sort of thing. I wonder, sir, if

Q (cont) the company, the co-operative itself, can be said to be a profit-making organization.

A In my opinion, sir, it is a profit-making organization, that it has made very substantial profits and that the assets of the board bear this out. It is very much like a mutual insurance company. The members own and control the business but the executives can do pretty much whatever they like with the profits that are made by the mutual association.

Q Quite sir, but the same can be said of the Mayfair Club or the Glencoe Club in Calgary, couldn't it?

A I am not familiar with either of these clubs, sir. I know you are, but I am not.

Q All right, sir. You are aware too if this company were wound up, the members don't get anything, the by-laws provide that the assets on a winding up would go to charity?

A I did hear that and I understand that is a provision in the constitution. When I first looked at this, I understood that the true co-operative if there were any assets left in the event of a winding up procedure, that these assets would become government property. This situation has changed apparently from the first time I discussed this with Mr. Weber.

Q I suppose the average citizen would rather have a

Q (cont) choice of where his assets went in that event of winding up than have the government take it over. They tend to do that when you are in business anyway.

A Right.

Q All right, sir, you referred to the ombudsman's report, Mr. MacPhee, and the minutes of the meeting that were in it. Here is what was said and I am referring to page 7, sir. This appears in minutes taken of that meeting with Mr. MacPhee, the real estate commissioner.

A Page 7 of what report, Mr. McGillivray, what date?

Q I am at page 7 of the ombudsman's report, sir. Do you have that before you?

A No, I haven't.

Q Your paragraphs aren't numbered.

THE COMMISSIONER: What paragraph?

MR. MCGILLIVRAY: It is number 5, sir. Perhaps I can find this for you, Mr. MacPhee.

MR. MACPHEE: Mr. McGillivray, we are in a very unfortunate position compared with all counsel and most people. We have not been provided with a copy of the ombudsman's report.

Q You do have the synopsis that also appears in this report prepared by your department of the meeting?

A Yes, sir.

Q Perhaps I might read you, this is minutes taken by a secretary, one Melita Altwasser who did the recording. Who is she, do you know, Mr. MacPhee?

A At that time, Mr. Weber's secretary.

Q Her minutes say this. "Mr. MacPhee said here that", and this was, perhaps I could just read you from the beginning two or three paragraphs, "Mr. Weber opened the meeting by reference to a meeting with representatives of the board, and the fact that he had consulted with Mr. MacPhee, the Commissioner of Real Estate. He said there were a few points that appeared to need discussion.

"The first point was the section on membership, being part two of the by-laws as submitted to the supervisor of co-operative activities. The point was brought up that if salesmen were allowed to vote on an equal basis with the agents who hire them, that it might conceivably happen that at some time the balance of voting salesmen might out number the voting real estate men. The real estate men present thought this unlikely in that the set-up was that for every 50 salesmen, one voting salesman was allowed at the meeting. They felt this close relationship allowed them to keep an eye on the salesmen in a manner that would not be possible otherwise.

Q (cont) Mr. K. McKenzie, solicitor," and that is the Mr. McKenzie who gave evidence here, sir, "Said here that the by-laws under discussion were the product of two years of work, and the board was very anxious that the terms therein be left as they were.

"Mr. MacPhee said, " and that is you, sir, "That in his capacity as Commissioner of Real Estate, he did not approve of several points. The first one was the master versus salesman (servant) relationship in the by-laws. Mr. MacPhee emphasized this point a number of times. He felt the principle of allowing the salesman to vote was wrong. He felt this point would create difficulties in the future in negotiations with the government. He felt the salesmen might eventually prove an embarrassment in handling the business of the board."

Did that fairly express views that you expressed?

A Exactly my views at that time, sir.

Q ^{as} And/much as you put them to the commissioner today?

A Yes, sir.

Q And then sir, referring to the draft prepared by Mr. Walker of your department of what occurred at that

Q (cont) meeting, that was his version, again this appears and I have reference to the first page, and this, sir, is Exhibit 1 to the ombudsman's report.

THE COMMISSIONER: What page, are you reading from these minutes yet?

MR. MCGILLIVRAY: I am referring now, sir, to what is Exhibit 1 in the ombudsman's report, this document.

THE COMMISSIONER: This one here?

MR. MCGILLIVRAY: Yes. Again, Mr. MacPhee, Mr. Walker is a member of your department?

A Yes, sir.

Q Who accompanied you there?

A That is right, he was recorder on my behalf, he was deputy commissioner of real estate.

Q Mr. Walker notes this, "The first by-law to be discussed was by-law 2 and in particular B, voting salesman member. Mr. MacPhee expressed the opinion that it was surely wrong to have a master and servant as members of the same group, each having voting power even though the voting power of a salesman was considerably limited to that of the agent. Mr. MacPhee felt that this would destroy the principle of a master and servant relationship. He further felt that although the salesman vote was limited, it was entirely possible in the case of a majority vote for the one

Q (cont) vote of a salesman to decide an important issue".

Again, your position was, Mr. MacPhee, the salesman shouldn't have any vote?

A Right, sir.

Q As distinct from every salesman having an equal vote with the agent?

A That is right, sir.

Q All right, sir. Now, will you tell the commissioner this, sir, because I think he is concerned with policy too as he has to make some recommendations to the government. Since the Edmonton Real Estate Board Co-operative Listing Bureau Limited had its by-laws approved in 1959, how has that board operated, sir, insofar as you, as Commissioner of Real Estate, have seen it operate in the sort of job that it is doing? Have you complaints or how do you feel about it, sir?

A Sir, the board of course has not been under my jurisdiction. I have not been the regulatory officer dealing directly with the board or affairs of the board. My own opinion is that the board has operated in a very respectable and ethical manner. Insofar as dealing with the great majority of its members are concerned, I have had no direct cause for complaint against the board. I feel that they have rendered

A (cont) some assistance to my department in having screened certain cases that formerly came to me as Commissioner of Real Estate, and in this way they have probably reduced the burden of work on government because they have under the powers granted to them by government exercised disciplinary action on numerous occasions, how numerous I am not prepared to state because I have no figures, but I do know that the volume of complaints that have come to my office in proportion to the number of people who are now engaged in the real estate business and allowing for the increase in population over the last 10 years, that the board is doing an awful lot of disciplinary work on its own that I wouldn't be aware of.

Now some cases have come to my attention. This particular case that this commission is sitting in judgment on here, Mr. Philipzyk was dismissed from employment with the Edmonton Real Estate Board but this did not from my standpoint as regulatory officer prevent him from licencing with another real estate board, not an agent of course who is a member of the board, but he could have licenced with some other real estate agent. It did not prevent him from seeking employment as an agent. As a matter of

A (cont) fact he did apply to my department for an agent's licence and he was unsuccessful in passing the examination, consequently we were unable to grant him the licence, but I want to make a point clear that quite apart from the considerations involving Mr. Philipzyk, we are concerned or I am concerned today before the Commissioner not with the Philipzyk incident but with the registration of these by-laws and the division of the power of control between one government office and another.

THE COMMISSIONER: These supplemental by-laws were first submitted to Mr. Weber?

A Yes, sir.

Q And then what was it, just a matter of courtesy that they confer with you?

A Well sir, if I recall and to test my memory, 12 years is quite a task. Mr. MacKenzie I admired yesterday, but he has been working in this quite up-to-date. I have not, sir, but I do recall Mr. Weber asking me to come in on this, saying to me that he himself was not familiar with the complications of the real estate business and that he would like my assistance and advice in reviewing its by-laws and anything that I thought --

Q But you had no power to veto the adoption?

A No sir, I had no power.

Q But your intercession was of an advisory nature?

A Right, sir.

Q I suppose Mr. Weber had some authority to say that the supplemental by-laws should not be adopted?

A Yes, sir, he had that authority of course, and it was my advice to Mr. Weber that these by-laws should not be adopted in the form in which they were presented at that particular time. Mr. Weber took my advice under very serious consideration because at the same time we had a faction in the Edmonton Real Estate Association and the Multiple Listing Bureau which was very much opposed to what another segment of the real estate business was doing at that time, and these people were in my office and on my doorstep and I was looking at this thing from the standpoint insofar as regulation and control was concerned, but as far as Mr. Weber was concerned I was purely in an advisory capacity.

However, in my advisory capacity, I advised Mr. Weber to refrain from registration of these by-laws until certain amendments were made, and the purpose of this meeting that Mr. McGillivray referred to was to really deal with these points of objection that I had raised to Mr. Weber. Certain amendments

A (cont) were agreed to at that meeting but they were very minor. The major points of concern that I expressed were not accepted by the members of the Alberta Real Estate Association present. Mr. Weber agreed at that meeting to , in an answer to a question from Mr. Henry Flewelling who was then the executive secretary of the Edmonton Real Estate Board, he agreed to register the by-laws on a question from Mr. Flewelling. I cautioned Mr. Weber and I said I felt that I would like to make further representations in connection with these by-laws and he said well, he said I am going to approve them for registration, so I said well that is your affair. However, I said before they are registered I would appreciate it very much if you would let me know when you propose to register these by-laws or the supplemental by-laws, so he said he would do that because I had intended to seek an audience with my minister to get ministerial advice and counsel on this particular problem, because after all, my department was adviser to the director and supervisor of co-operative activities. Mr. Weber said he would let me know, but unfortunately he forgot about this agreement to let me know when these by-laws were going to be registered. The by-laws were registered and I ceased to take interest in the matter

A (cont) from that point forward.

Q That was the end of it?

A That was the end of it and I felt that whatever my objections were to the by-laws, the supplemental by-laws in the form of which I had expressed, that they were represented to me and I had expressed objection to, I felt that my part in the matter was completed. I felt that I would live with the situation as it now presented itself and that was the position that --

Q It was really water over the dam.?

A It was water over the dam, sir, and no matter how I felt about it I couldn't change it, and being an officer of the government I got along and worked I think pretty effectively quite well.

Q The same has been in force for about 11 years, and Calgary and Red Deer and Lethbridge all have the same sort of by-laws.

A Yes sir, I believe the Edmonton by-laws ...

Q You didn't take any issue with ... pardon me, Mr. McGillivray. Did you take any issue with Mr. John's observations yesterday?

A No, I hesitate to say that I took issue with Mr. John at any time, sir. He is a very vocal and intelligent person and he made an excellent case for the board. I think Mr. John, Mr. MacKenzie both were somewhat

A (cont) more enthusiastic on their particular side of the case than I would personally have been had I known the background of this whole proceeding. Mr. MacKenzie made it appear that everything was quite cordial at this meeting. I would like to make it clear that I was asked at that meeting, sir, and this involves Mr. John although he was not at the meeting, but it does involve the position that I held at the conclusion of the meeting, so that it was not the most cordial wind-up of proceedings as Mr. MacKenzie suggested yesterday, and I was like -- would like that to be on the record, but --

Q It really doesn't matter.

A It doesn't really matter.

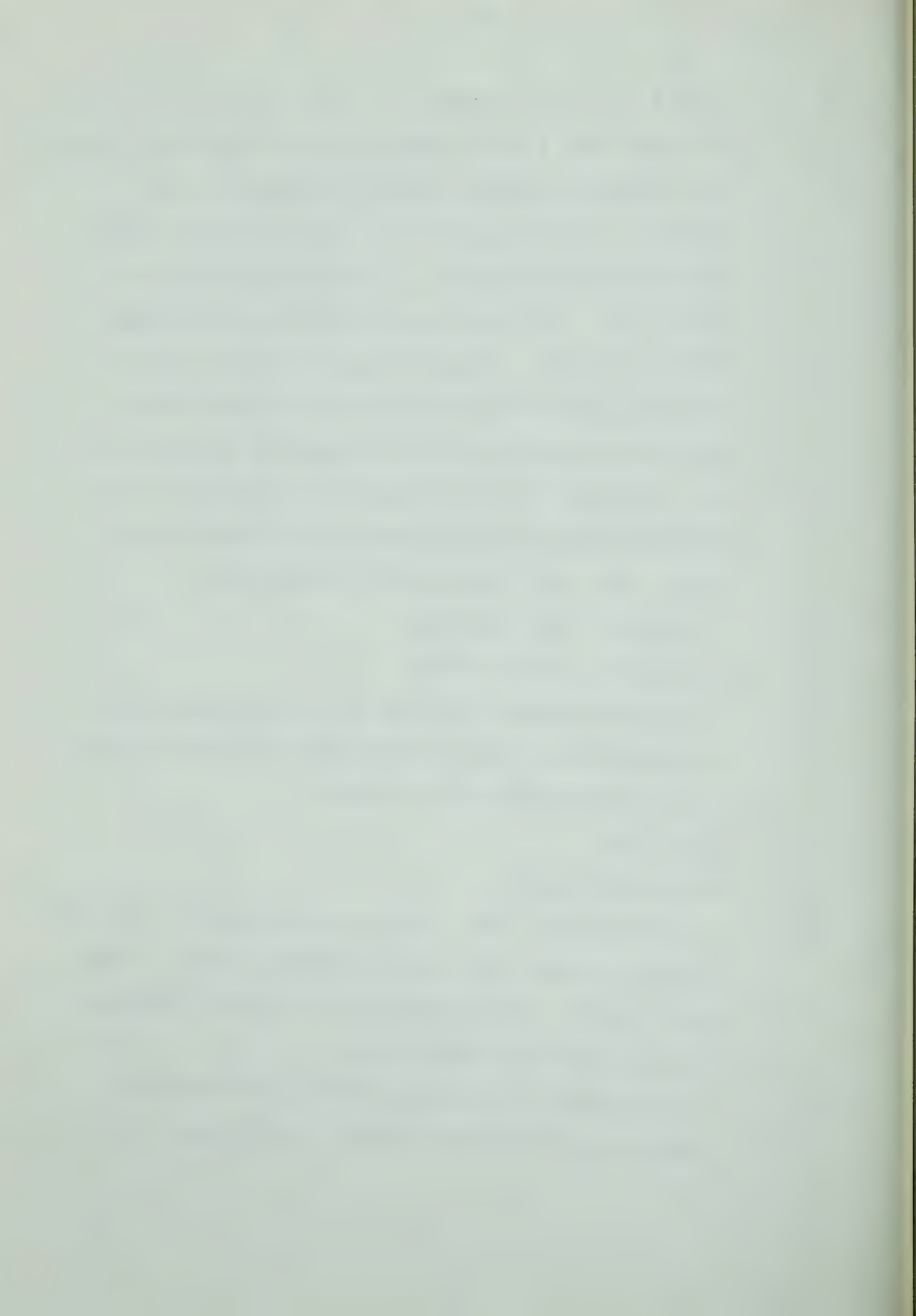
Q I mean we have to deal with what we have got and I am appraising an organization that has been working under these by-laws for 11 years.

A Right, sir.

Q With some success.

A I would say so, yes. I have to admit that looking at the thing today that there has been success. There have been of course these abuses that the ombudsman is now directing attention to.

Q I never understood until yesterday what multiple listing was, real estate board, I don't know how they



Q (cont) run it. It strikes me as a very ingenious scheme where an energetic salesman, the raw product he has to deal with are listings, and if you get the right fellow with a thousand listings available he can do pretty well for himself. It gives the free enterprise entrepreneur who is aggressive and industrious a chance to do pretty well, doesn't it?

A Yes sir, I would say this very definitely. The members of the Multiple Listing Service certainly are much more successful from the people who are not in the board, and of course on this particular point when you have about 66 2/3% of the licenced real estate people in the board, there becomes a question of concern over public interest as to whether or not this is approaching a sort of a closed shop proposition, but this is another aspect of the thing. We know that the people outside the board have difficulty in operating because they have not made available to them the multiple listing --

Q Couldn't they join?

A Only if they meet the requirements of the board and these requirements are sometimes pretty stiff.

Q Yes, but a legitimate agent, one of these 33% who qualified and so on would not be excluded from the multiple listing group?

A Not if they qualified and met all the specifications.

Q Some of these people fully qualify and prefer the independence of not being in the multiple listing?

A Yes sir, some of them have withdrawn because they were not prepared to accept the dictation.

Q Of course there is a big one. Knowlton didn't want anything to do with them either.

A I think he was a member of the Calgary Real Estate Board at one time, Mr. Johns, was he not?

MR. JOHNS: I don't think I should answer any questions.

A In any event, Mr. Knowlton is a person who would not accept any direction from any trade organization.

THE COMMISSIONER: Well, I have been doing too much talking, Mr. McGillivray. Go ahead.

MR. MCGILLIVRAY: Probably on matters much more relevant than I have touched on.

One last thing, Mr. MacPhee, as far as I am concerned, supposing this group - perhaps you aren't qualified to answer this but I can put it to you - if this group had incorporated under the Companies Act as distinct from under the Co-operative, neither you nor Mr. Weber or anybody else in the government has got anything to say about how they set up their affairs, am I not right about that?

A As you say, I am not qualified to answer that question, but my opinion is that I would agree with you, yes.

MR. MCGILLIVRAY: All right, sir. Perhaps you would answer my learned friends.

MR. REDMOND EXAMINES THE WITNESS:

Q Mr. MacPhee, just one or two things. First, do I gather that in reaching an opinion as to whether or not you approved or did not approve of the supplemental by-laws in 1959, you had two points of concern. I think one of them you have expressed quite fully here and that was that you were concerned about the salesmen having a vote, is that right, that was one concern?

A Yes, because of the control that would exercise.

Q You were afraid that if all salesmen had votes, the large agents would take advantage of the master-servant relationship and the large agents would control the board?

A That is right, Mr. Redmond, and that is precisely what was attempted, and this is one of my objections to this whole proceeding.

Q So that the two answers in the supplemental by-laws on that point are first of all one agent one vote, and secondly a limited vote for salesmen, so that was

Q (cont) in effect a partial answer to what you had to say?

A Yes, it was an amendment that was worked out after some 103 agents had been voted into membership in the Edmonton Real Estate Board to achieve a result apparently because of the preponderance of votes that this would give the large agents, and this is the thing that the other smaller agents were objecting to at that particular time.

Q So that arrangement then, sir, was a compromise arrangement to satisfy both factions and to go some distance toward meeting your objection?

A Yes sir, but it did not meet my objection because I still felt that there was enough power in the voting with one agent out of 50 to influence a decision.

Q You would have preferred if the salesmen had not been given a vote at all?

A Yes, sir.

Q Now, the other objection if I understand it, sir, was that you felt that the effect of incorporating this organization under the Co-operative Associations Act was that some responsibility for supervising the operation of the association would then come under Mr. Weber's office rather than yours, is that right?

A Yes, sir, that is right, and particularly when there

A (cont) was a clause in the by-laws that sanctioned the opposition to laws detrimental to the interest of real estate business. This is something that I didn't think Mr. Weber should approve as officer of the government but that was just my opinion.

Q That simply then, sir, was an expression of the interest of the group in being a voice for real estate people in making representations to the government?

A Presumably, but with the corporation of the Edmonton Real Estate Board and the salesmen members combined, this made it impossible for this body to treat directly with government any matter of legislative negotiation because we were not going to deal with both agents and salesmen in the one association.

Q And the other aspect of that same problem then, sir, was that you felt that to some extent Mr. Weber's offer would have some supervision over real estate and you felt that that should reside in your office under the Act?

A Well sir, yes, in the case of Mr. Philipzyk and in another case that came to my attention, these two cases were referred to the supervisor of co-operative activities because we had no jurisdiction.

Q There was, I take it, sir --

THE COMMISSIONER: What did Mr. Weber do? Once he files

THE COMMISSIONER: (cont) the supplementary by-laws, I haven't heard anything to indicate he would have any authority. Once he adopted the by-laws, that's it. There is no suggestion that Mr. Weber has any authority to say you are not doing this or that under the by-laws. His day was over once he filed the by-laws.

MR. REDMOND: I think to be fair, sir, he did. The evidence will show later probably or I guess the report that is filed does show this, that he did get a letter from Mr. Philipzyk but then quite a few people got letters from Mr. Philipzyk, and I would suggest that it does not indicate that Mr. Weber has usurped anybody's functions.

Now Mr. MacPhee, would I be right in asking this whether both your office and Mr. Weber's office function under the minister? I think you said that and I just wanted to be sure.

A No sir, you misunderstood me.

Q I am sorry.

A I function under the Provincial Secretary.

Q And he is under the Minister of Industry and Tourism?

A Yes.

Q When you were talking, sir, about some fear that some function of your office would be usurped by someone else, you then were talking about Mr. Weber's office?

A Not necessarily. I was talking about the functions that were being assumed by the board.

Q Well sir, there was nothing, was there, in the by-laws which in any way interfered with your right to grant or refuse a licence to any agent or any salesman?

A Purely on the basis of licencing, no.

Q And as you have said, sir, you would decide if someone who had been dismissed by his employer as a salesman, you would decide if he came to you on the basis of your own judgment whether he should have a salesman's licence as the employee of another agent or whether he should have an agent's licence if he applied for one?

A Yes, on the facts as they were presented to me at that time.

Q And you would not presumably be influenced in your judgment by a proceeding of the board, you would exercise your own judgment in determining whether the man was qualified to be a salesman or an agent?

A Yes sir, I have tried very hard to remain quite impartial in any proceedings of the board that I have been made aware of. I have not tried to assess the board's decisions.

THE COMMISSIONER: Do I understand you to say, Mr.

MacPhee, that after all these difficulties with

THE COMMISSIONER: (cont) Kellough and so on, that Mr.

Philipzyk came to you for a licence and was not able to pass your examination?

A That is right.

Q That is why he didn't get a licence?

A That is why he didn't get an agent's licence. He was still entitled to a salesman's licence, sir. He could have licenced as a salesman for anyone, with anyone of the 33% group that is outside the Edmonton Co-operative Listing Bureau, but he did apply for an agent's licence. He had enough years in as a salesman.

Q He was applying for an agent's licence?

A He was applying for an agent's licence and he was unable to pass the examination for an agent's licence.

Q MR. REDMOND: Just one more thing, Mr. MacPhee. You made a remark about the requirements of the Edmonton Real Estate Board Co-operative Listing Bureau Limited being stiff. Do I take it that you were referring to the standards of ethics and the standards of education which they require of the people who are members of the Bureau, is that what you meant?

A Yes, I think the overall assessment of character and integrity enters into it as well.

MR. REDMOND: Right, thank you, sir.

MR. BOWEN EXAMINES THE WITNESS:

Q You mentioned, Mr. MacPhee, that you have the power of licencing or not licencing both agents and salesmen, is that correct?

A Yes, sir.

Q And I take it as a prime requisite of licencing, a bond is required?

A Yes, sir.

Q So that if a bond is not forthcoming you do not issue a licence, either agents or salesmen?

A That is right, sir.

Q And I suppose you are aware that in obtaining a bond discretion as to the granting of the bond lies within the, say an underwriter with a Canadian insurance?

A Right, sir.

Q So that Number one, an underwriter would have sole power of seeing that a man did not get an agents or a salesmans licence, is that correct?

A Yes sir, it is correct.

Q So that number one, you have got an underwriter saying no, he is not going to be a salesman.

THE COMMISSIONER: There is only one underwriter?

MR. BOWEN: No, sir, there are many underwriters.

THE COMMISSIONER: He would be able to go to any one of

THE COMMISSIONER: (cont) them.

A Yes, sir.

THE COMMISSIONER: There is about 50 of them licenced.

A This is a very important point because one refusal does not mean that the agent may not get a bond.

Q MR. BOWEN: It is more difficult when one refuses, is it not, Mr. MacPhee, to obtain a bond from another underwriter?

A It is, sir, but you gave me a question and I answered it.

Q Perhaps in line with the commissioner's comment, the salesman, whether he gets a licence or not is dependent upon whether the underwriters will issue a bond?

A If you put it in the plural sense, yes, but the underwriters do issue bonds as a rule.

Q Let's suppose we have the bond and it is in order. Who is it in your department that ordinarily looks over these cases as to whether a salesman is going to get a licence?

A I have a licencing officer who goes through the normal administrative procedures and checks the application and if there is anything in the application that indicates that the deputy superintendent or the superintendent should be advised, the superintendent

A (cont) gets the application himself.

Q And he reviews it?

A He refuses if he feels the facts --

Q I am sorry, sir, you misunderstood me or misheard me. He reviews it?

A He reviews it, yes, I am sorry, yes.

Q And at that point he can say yes or no?

A Yes, sir.

Q And when you refer to the superintendent you are referring to yourself in your official capacity, sir?

A Right.

Q And you say no. Where does this individual go then, where does he go to try and get a licence?

A He has the right to appeal to the Minister, and the Minister will give him a hearing, examine the evidence, and certainly may override the superintendent's decision.

Q And if the minister refuses, where does this individual go?

A Well sir, I think that is the end.

Q That is the end. Now then, what we have come to is this, that a number of individuals in the guise of underwriters can effectively preclude a person from being a salesman of real estate, is this not correct?

A Yes, sir.

Q And the superintendent along the journey can preclude to that point at least an individual from earning his livelihood as a salesman of real estate, is that correct?

A Yes, sir.

Q And finally, if we come to the exalted sphere of the minister, he can effectively and finally preclude a salesman or an individual from being a salesman and earning his living at the selling of real estate, is that correct?

A That is right, sir.

Q And there is no appeal from him?

A No appeal from the decision of the minister.

Q Now then, I had understood you to tell my learned friend, Mr. Redmond, that your objection was a division in powers between departments of government, is this correct?

A Yes, sir.

Q And you were fearful that the placing of this particular organization under the Co-operative Societies Act would derogate from your statutory powers under the Real Estate Agents Licencing Act?

A At that particular time that was the way I felt, sir. Not only that, but about 50% of the real estate men in the City of Edmonton felt that way.

Q I am only asking for your opinion.

A Yes.

Q Were you at all fearful that with salesmen in this organization, that it would derogate from your authority as qua the agents and the salesmen, at least the authority of your department, was this a fear?

A Yes, sir.

Q All right, now would you be specific as to your thinking as to what would happen with regard to your authority and the exercise of that authority by you over the salesmen or agents?

A Yes, sir. Mr. Commissioner, may I have the privilege of reading a letter that I addressed to the Deputy Provincial Secretary on the 13th of November in reply to Mr. Bowen's question? I think it sets out my concern and my fears at that time which deals with this very point that he has asked me to discuss. It is a very short letter but it points out the fear and concern that I had at that time.

Q If you wish to answer that way, I am sure it is all right, isn't it, Mr. Commissioner?

A This letter is dated November 13, 1957. It is addressed to Mr. E. R. Hughes, the Deputy Provincial Secretary, re Edmonton Real Estate Board Application for Registration under the Societies Act.

A (cont) "At a joint meeting of the Edmonton Real Estate Board and the Co-operative Listing Bureau which I was asked to attend November 6th, Mr. R. W. Grierson, member of the Committee in charge of registration under the Societies Act made an important statement about the subject. In the form of an oral progress report, Mr. Grierson told the meeting that the board's solicitor, Mr. Kenneth A. McKenzie, Q.C., had the problem of registration competently in hand. Mr. Grierson claimed that the slow headway being made was due to two or three groups of lobbyists from the Edmonton Real Estate Association. However, he did say that registration was going ahead in spite of the obstructionists who were present at the meeting.

Mr. Grierson's attitude in making the above statement was quite dogmatic. As an administrative officer, I was impressed with the fact that if the government did yield up any of its powers of regulation and control of the real estate business to a minority group, many difficult problems would have to be faced by the superintendent in trying to implement democratic administrative procedures.

In considering the principles involved, the attached clipping taken from Monday night's issue of the Edmonton Journal criticizing the granting of

A (cont) extraordinary powers to the Ontario --"

THE COMMISSIONER: What is this, is this a letter to you?

A This is my, the last letter I referred to here about the powers of government.

Q A memo, was it?

A This is my memo to the Deputy Provincial Secretary.

Q Oh, yes.

A This is my concern, this was my concern at the time about the power that was being centralized in the large agencies at that particular time, and I felt that it was my duty to point this out to my immediate superior in government, which I did by this memorandum.

Q MR. BOWEN: Did you feel then, sir, that this lower echelon authority in the form of the Real Estate Association or the Co-operative Bureau was going to usurp your functions that were higher up and given to you by statute?

A I think to some extent this has actually been the case. The disciplinary powers that were formerly vested in the Superintendent of Insurance have for years now, some of them, the Superintendent has not lost them but the board by virtue of its constitution and statute exercises these disciplinary powers on its own.

Q You said the superintendent has not lost that, you

Q (cont) still have that?

A The superintendent still has these powers but many of these powers are, many of these complaints are dealt with within the board now without reference to the office of the superintendent. This is something --

Q But the office of the superintendent is still open and the powers can still be exercised by the superintendent --

A That is right, sir.

Q -- if his jurisdiction is sought, is that not correct?

A That is right, sir.

Q I gather then what the board has done, they have supplemented quite satisfactorily the disciplinary portion or facet of the superintendent's office?

A I think I said that, Mr. Bowen, a while ago, and the only thing I did say that there were some exceptions to that.

Q Generally speaking though, sir, I take it from what you say that your office is quite happy with the situation?

A Yes, sir. Looking at this 12 years later, I feel that the board has served a very useful purpose and I am certainly not in today's experience saying that the board is not a proper institution in that it is something that I am not working with and getting along

A (cont) quite effectively with.

MR. BOWEN: Thank you, sir.

A This is 12 years later, Mr. Commissioner.

MR. CAVANAGH EXAMINES THE WITNESS:

Q Mr. MacPhee, in addition to the requirement of a bond for a salesman, you do have reference to the applicant's character, do you?

A Yes, sir.

Q And in that regard do you require letters of reference?

A Yes, sir.

Q Do you require letters of --

A Mr. Cavanagh, may I stop you here. This is letters of reference in the case of an agent, not letters of reference in the case of a salesman.

Q In the case of a man who has been a salesman and for one reason or another is changing from one agency to another, his licence becomes suspended and then he becomes affiliated with another agency, and then he applies to have his licence again in the agency B. Is there the same checking done?

A Yes sir, the same routine procedure is followed. It may appear to be a duplicate of work when it comes that quickly but we are always concerned about the reasons for a man transferring from one agency to another.

Q Do you check with the former agent?

A Yes, sir.

Q The former agent of course can influence the issuance of a bond in the first place, can he not?

A Yes sir, I would agree with that. He may be able to, I don't say that he can, he may be able to.

Q In the case of Philipzyk, were representations made by Kellough concerning the issue of a licence when he moved to Burton Real Estate?

A I can't recall that far back, Mr. Cavanagh, I haven't reviewed that section of my file. Mr. Walker has the file if I may ask him.

Q Perhaps, Mr. Commissioner, this might be a good time to adjourn while he looks at the file.

THE COMMISSIONER: All right, adjourned.

HEARING ADJOURNED.

HEARING RESUMED.

Q MR. CAVANAGH: Mr. MacPhee, I think my last question was whether there was any representation at the time of this charge of Mr. Philipzyk by Mr. Kellough to your department?

A The answer, Mr. Cavanagh, is no. I have examined the file in the recess and certainly there is not anything on file that would indicate this to be the case.

Q Well, subsequently at some stage Mr. Philipzyk lost

Q (cont) his licence. I understand that is because he lost his bond, is that correct?

MR. MCGILLIVRAY: I wonder, sir, if perhaps on this subject it wouldn't be more satisfactory from my friend's point of view if Mr. Walker, Mr. MacPhee's right-hand man and who dealt directly with this aspect of the situation mightn't be called.

MR. CAVANAGH: That is probably correct, Mr. Commissioner, that Mr. Walker looks after the day-to-day operations.

THE COMMISSIONER: He will be giving evidence.

MR. CAVANAGH: No, he wasn't on the list.

MR. MCGILLIVRAY: I hadn't intended calling him, sir, but in the light of my friend's question it would seem perfectly reasonable. It seems to me that perhaps Mr. Walker can be of some assistance to you on this score.

THE COMMISSIONER: You will be happy to abandon any further examination of Mr. MacPhee and have the opportunity of examining Mr. Walker?

MR. CAVANAGH: Yes, sir.

THE COMMISSIONER: I guess that is all, Mr. MacPhee.

MR. MCGILLIVRAY: May I just ask one question, sir.

I just want to be clear about this, Mr. MacPhee. The fact of the matter is that where any salesman or

MR. MCGILLIVRAY: (cont) agent is a member of the Edmonton Co-operative, if I might use that short form, or not, you have precisely the same authority over them that you have always had over any real estate man?

A Yes, sir. My statutory authority remains as it did formerly.

Q And, the difference in practice is that if a member of the public who might otherwise have come to your office with a complaint makes, has what he feels is a ground for complaint about either an agent or a salesman today, he may take that to the Edmonton Real Estate Board rather than to your office?

A Yes, sir.

Q And as I understand your experience is that as far as you know they are dealing with those matters reasonably effectively?

A Yes, sir. The board, we deal with statutory offences very largely under the Real Estate Agents Licencing Act. Formerly before the Real Estate Board was set up in the form in which it is now, we dealt with complaints regarding ethics and practice and all this sort of thing. All these things have been eliminated from our office as a result of the operation of the Edmonton Real Estate Board.

Q Mr. MacPhee, let me just put this to you. Suppose as

Q (cont) a house owner who has just had his house sold through an agent, I come to you and say this fellow is seeking to charge me 6 or 7%, and I say the deal I made with him was that he would do it for me in this instance at 4% and he is holding my money back and won't give it to me and that this is wrong, and I complain to your office. What do you do about that, sir, tell me to go see a lawyer?

A This is a dispute over a commission?

Q Yes, I am the customer, I am a member of the public and I say this bandit is charging me more than he agreed and worse than that, he has deducted the money at source which went through his hands and I am out 2 or 3 thousand dollars, and I complain to you.

A Well, in this particular case it appears to me to be a bonafide complaint of the public against a real estate agent for misappropriation of some monies that the agent had, and I think this would be quite properly a case for investigation by my department.

THE COMMISSIONER: What do you do though? Here is Mr. McGillivray in trouble, you have got the Licencing Act that says here is the situation, 4% deal and he has made it 7, I am out \$2,000. Now do you help him out at all or do you tell him to go to a lawyer?

A I think in the majority of cases, I see this, sir, as a dispute over commission, something that has arisen as a result of a 4% deal and a 7% deal.

THE COMMISSIONER: I would like your conclusion, not your reasons. What do you do? We have got the case before you here now. He says he is out \$3,000, what do you as superintendent do to help him?

A Well sir, I have to decide whether this is an ethical matter or a legal matter and if it is --

Q All right, well you make that decision, what do you do?

A If I decide it is a legal matter I send him to a lawyer, at least I would ask him to --

Q What are you going to do in this case, this is the case?

MR. MCGILLIVRAY: Is it legal or ethical?

THE COMMISSIONER: Do you tell him to go peddle his groceries somewhere else or hug him and kiss him and give him his \$3,000?

A I realized at the very beginning of this question, whether it was legal or ethical might be the question that I have to resolve here.

THE COMMISSIONER: Well I would call it both legal and ethical.

A Well sir, if it is legal, my advice to the client

A (cont)' would be to --

THE COMMISSIONER: If it is ethical you would do something?

A If it is ethical, no sir. Well, if it is ethical it might be something that might very well be --

Q You got the legal business out, you are not going to do it if it is legal. Now are you going to hedge on ethical?

A Well sir, this is something that the board could very conveniently deal with in the matter of ethics if the particular agent was a member of the board, but if the agent is not a member of the board I am afraid there is no other spot for regress unless --

THE COMMISSIONER: Would you like my advice, Mr.

McGillivray? Go to the Edmonton Real Estate Board and have the Ethics Committee get to work.

MR. MCGILLIVRAY: You are not a member of the board.

That is all I have, thank you, sir.

A I wouldn't like any more questions like that.

THE COMMISSIONER: Thank you.

MR. MCGILLIVRAY: Thank you, sir.

(WITNESS RETIRES)

MR. MCGILLIVRAY: Sir, I will be calling Mr. Hogan, who is the secretary of the Edmonton Real Estate Board Co-operative Listings Bureau Limited. He is in effect Mr. Johns counterpart in the very company

MR. MCGILLIVRAY: (cont) whose by-laws are under discussion here. But subject to that, I am now coming from the general set-up of this particular board and real estate generally to the specific, namely the matters that relate to Mr. Philipzyk. Mr. Haugen will be giving evidence generally. Mr. Walsh will be giving evidence generally on the set-up of the board, but subject to that they will be called in relation to the Philipzyk matter too, but I am now going to Philipzyk, and to that end, sir, I would like to call Mrs. Hansen.

THE COMMISSIONER: What you are doing, you are getting into the Kellough difficulties?

MR. MCGILLIVRAY: Yes, the Kellough Philipzyk dispute.

THE COMMISSIONER: But at some later date you are going to have Haugen and Walker who will also give evidence on this dispute too?

MR. MCGILLIVRAY: Yes, sir. Now sir, I would also like to suggest, and my friend, Mr. Bowen, with whom I have discussed this, agrees that while Mrs. Hansen is giving her evidence, another witness who would be next called, Mr. Olthius, be excluded from this room. I say that, sir, because the evidence will be these two were together. It seems unreasonable to me that the one witness should hear the other cross-examined

MR. MCGILLIVRAY: (cont) and I think in fairness to you
getting the facts as best you can --

THE COMMISSIONER: That is a subject of agreement really.

MR. MCGILLIVRAY: Perhaps Mr. Olthius, if you would ...

THE COMMISSIONER: Yes, he isn't here?

MR. MCGILLIVRAY: No, sir. I spoke to him very briefly,
said I would be making this request and I take it
that he already stepped out.

MAGDELINE HANSEN, sworn, examined by MR. MCGILLIVRAY:

MR. BOWEN: Mr. Commissioner, I should inform the
board that Mrs. Hansen, while her English is ade-
quate, it is pretty basic and I would ask counsel
to try and keep themselves down to small words in
English so that she will understand them.

MR. MCGILLIVRAY: My friend, Mr. Cavanagh, wonders if
perhaps Mr. Kellough should not also be out while
both Mrs. Hansen and Mr. Olthius are giving their
evidence.

THE COMMISSIONER: You think so?

MR. MCGILLIVRAY: I would have thought, sir, that his
evidence will not relate to ... well, it may in one
sense, so ...

THE COMMISSIONER: Perhaps Mr. Kellough --

MR. BOWEN: To go even further, Mr. Commissioner,
probably Mr. Larson and Mr. Kellough should both leave.

(MR. LARSON AND MR. KELLOUGH EXCLUDED)

Q MR. MCGILLIVRAY: Mrs. Hansen, what is your
occupation?

A Saleslady.

Q And you are a saleslady for whom?

A For Kellough Real Estate.

Q You are employed by Mr. Kellough?

A Yes.

Q How long have you been, that is Mr. Homer Kellough,
is it?

A Yes.

Q How long have you been a saleslady with him?

A Since 1963.

Q 1963. Now, will you tell the Commissioner just in
your own words about some conversations that I be-
lieve you say took place between you and Mr. Robert
Philipzyk with a Mr. Olthius present sometime in
1965? Will you just go ahead in your own words and
tell the Commissioner what occurred?

A Yes. We went out to check out a house and at that
time we came up there, Mr. Philipzyk, he was at the
same house.

Q I am not hearing you too well. Can you just start

Q (cont) again?

A Joe Olthius and I went up to check a house out on 101st Street.

Q You and Mr. Olthius went up to look at a house?

A Yes.

Q On 105th Street, you say?

A 101st Street.

Q What was the name of that house you were going to look at, do you remember?

A The people's name are Rich.

Q So you and Mr. Olthius were up on 101st Street looking at a house owned by somebody by the name of Rich?

A Yes.

Q Go ahead, what occurred?

A And Bob Philips, he were parked right in front was the car, and he came out from the same house.

Q You say Bob Philips, is that the same gentleman as Bob Philipzyk?

A Yes, but at that time we called him Bob Philips.

Q You knew him as Bob Philips?

A Yes.

Q Do you recognize him here, Mrs. Hansen?

A Yes, I do.

Q That is this gentleman sitting here with the envelope in his hand?

A Yes.

Q All right, just so we are talking about the same person. Now you and Mr. Olthius were where, you were up at the vicinity of this house, where are you?

A On 101st Street.

Q Yes, but are you on the sidewalk or --

A No, we were sitting in the car.

Q You and Mr. Olthius were sitting in the car?

A Yes.

Q Where does Mr. Philipzyk appear from?

A He came from the same house down the sidewalk the time we drove up.

Q He came from the same house about the time you drove up?

A Yes.

Q All right, what occurred?

A Then he came over, he saw us in the car, he came over to talk to us.

Q Did you know Mr. Philipzyk?

A Yes, I did.

Q How had you come to know him?

A I worked together with Mr. Philipzyk.

Q You worked with him, what, when he was working for Mr. Kellough?

A Yes.

Q He same over to the car and just what occurred?

A He bent down and looked in the car and then I introduced Joe Olthius.

Q He bent down and looked into the car and then you introduced Joe Olthius?

A Yes.

Q Which side of the car were you on?

A I was sitting beside Joe Olthius, he drove the car.

Q Joe Olthius was at the wheel, you were sitting to his right in the front seat?

A Yes.

Q Mr. Philipzyk comes over to your side of the car?

A Yes.

Q And you say you introduced him to Mr. Olthius?

A Yes.

Q All right, what then occurred?

A Then he said he couldn't understand Joe Olthius, he said he couldn't understand he could work for a firm like Kellough Real Estate.

Q Mr. Philipzyk said he couldn't understand how what, you or Joe or --

A Yeah, that you could work for a firm like --

Q Kellough Real Estate?

A Yes.

Q That is Mr. Philipzyk said to you and to Olthius he

Q (cont) couldn't understand how you could work for a firm like Kellough Real Estate?

A Yes.

Q Did he say why?

A He said because Mr. Kellough, he owes him a lot of money and he wouldn't pay. The only way he could get his pay was to sue him.

Q Yes, he said that Mr. Kellough owed him a lot of money and the only way that he could get his money was to sue Mr. Kellough?

A Yes.

Q Did he say anything further?

A He said Mr. Kellough, he was a big crook.

Q Did he elaborate on that at all?

A Yes, he did.

Q Well, did he say why?

A Because he owed him the money and wouldn't give it to him.

Q To whom did he make the statements, to you or Mr. Olthius or both of you?

A Both of us. We were both in the car.

Q What, how did this come up, did he just arrive and out of the blue say I can't see how you could work for a man like Kellough?

A Because Joe Olthius had started for Kellough so I

A (cont) introduced him -- Joe Olthius.

Q You say that Joe Olthius has just started for Kellough and when you introduced Joe you mentioned that?

A He had been there for a little while, but he hadn't talked to him.

Q Did you or Mr. Olthius have any comment to make to these remarks of Mr. Philipzyk?

A I said I was very satisfied.

Q You said that you were satisfied?

A Yes.

Q Did Mr. Olthius have anything to say at all?

A He says he wasn't afraid he wouldn't get his money.

Q He said he wasn't afraid he wouldn't get his money. Was there anything further said?

A Yeah, then Mr. Philipzyk, he said a man like Mr. Kellough, he should never have agent's licence or operate real estate firm.

Q What reply if any did you or Mr. Olthius make to that?

A We didn't say very much to it. We thought that Mr. Kellough, he was a good man.

Q You thought that Mr. Kellough was a good man, you didn't say very much?

A No.

Q Did Mr. Olthius say anything, do you recall?

A No, he said Mr. Kellough, he were a good man so ...

Q Now Mrs. Hansen, tell the Commissioner approximately when this incident that you have described occurred?

A It were in the spring, maybe in May or first of June.

Q In May or June of 1965?

A Yes.

Q I wonder, Mr. Bowen, if I might have, or Mr. Redmond...

Mrs. Hansen, I am showing you a document in handwriting. Can you identify your signature on that document?

A Yes, that is mine.

Q And this purports to be a statement made first of all, when was this document prepared?

A In November.

Q November of 1965?

A Yes.

Q How do you know it was November?

A Because they were written right before I had to go to the hospital.

Q It was written before you had to go to the hospital?

A Yes.

Q Do you recall when you went to the hospital?

A The 12th of November.

Q The 12th of November, 1965?

A Yes.

Q How did it come to be written at that time, I mean

Q (cont) you were going to the hospital but why was it written out at that time?

A Mr. Kellough, he requested a letter before I go to the hospital.

Q Mr. Kellough requested a letter before you went to the hospital?

A Yes.

Q And apart from this letter appears to be signed by Joe Olthius and by Magda Hansen and you have identified this as being your signature, Magda Hansen, is that correct?

A Yes.

Q In whose handwriting is that document?

A That is Joe Olthius'.

Q May this be marked, sir, and I will then read it to you and then ask the witness some questions about it?

THE SECRETARY: Exhibit 15.

DOCUMENT WRITTEN BY MRS.
HANSEN AND MR. OLTHIUS,
MARKED EXHIBIT #15.

Q MR. MCGILLIVRAY:: Mrs. Hansen, this document reads ... first I will read it to you, sir, and then I would like to ask some questions about it.

"It was sometime in August of this

Q (cont) year that we happened to meet Mr. Bob Philips on 114th Avenue and 101st Street, and we started a casual conversation about real estate. I didn't know Bob Philips very well at that time but Magda Hansen had worked with him in the Northeast office of Kellough Realty. Mr. Philips stated he was very glad that he had severed relations with Kellough Realty and said he could not understand how we could work for a man like Mr. Kellough. He then went on to say how he was treated with regards to his licence, insurance money and commission and stated that Mr. Kellough owed him a substantial sum of money, but he would not pay him. He said Mr. Kellough tried to blackmail him. He also stated that he should have taken this matter to the Real Estate Board and lay a charge against him because a man like Mr. Kellough should not be in the real estate business and hold an agent's licence. Some more remarks were made against Mr. Kellough but I cannot recall all of them."

Now this is the document you signed. You stated in the document it was sometime in August of this year this document was written in November of 1965. You have told the Commissioner that the time you met with Mr. Philips was really in May or June, is that correct?

A Yeah, that were in May or in June.

Q Why did you say in this statement, Mrs. Hansen, it was sometime in August of this year?

A We had people out in August to show them the house, the same people.

Q You had people out in August to show them?

A The same people from the same house. Mr. and Mrs. Rich, we had them out in August to show them the house.

Q You had Mr. and Mrs. Rich out in August to show them houses?

A Yes. And then we were mixed up in the day.

Q And you were mixed up in the day?

A Yes, we didn't look in the diary.

Q Did you look in the diary at the time?

A No, we didn't.

Q Have you got your diary here?

A Yes, I have.

Q What does it show us?

A That time we took the people out to show them the house but that time they had sold the house.

Q You are referring to an entry of Friday, August 20th, and this is a Diary for 1965. That entry reads "Mrs. Rich". Then there is a telephone number and an address, 11617 - 101 Street, and then a note "Showed

Q (cont) her", and then three other addresses appear.
Is there some earlier entry in the diary?

A I took Mr. and Mrs. Rich back to see the same house
that they liked.

Q You took Mr. and Mrs. Rich back to show them the
same house on August 24th?

A Yes.

Q Now you say that you were going to the Rich house
in May or June when you had this conversation with
Mr. Philipzyk?

A Yes.

Q Is there anything in your diary for May or June rele-
vant to being at the Rich house?

A No, because we checked the house out, they were pri-
vate advertised.

Q You were there twice though, once in May or June and
then what, again in August?

A Yes.

Q According to this were you actually there twice in
August?

A Yes, I was.

Q As I understand you, you are saying that this is the
reason why you, in November when you wrote this
statement, thought it was in August when you were --

A Yeah, we were mixed up in the dates because we were

A (cont) concentrating on what was said.

Q You were mixed up in the date because you were concentrating more on what was said.

THE COMMISSIONER: On this date in August when you were at this house, was Mr. Philipzyk there then that day?

A No.

Q MR. MCGILLIVRAY: You just had the one meeting with Mr. Philipzyk?

A Yes.

Q In 1965? That is you say in May or June?

A Yes.

Q You say that your statement is erroneous when it speaks of sometime in August and you point out that you were back in August and you think that is why you made the mistake, is that what you are saying?

A Yes.

Q Let me put this to you, Mrs. Hansen. The events that you are talking about there, 1965, that is five years ago, how can you remember the day it was, May or June, that is the spring rather than August ~~when~~ in November of that year you came to be mistaken?

A Because I remember that time we went to the house they had a sprinkler on in the garden and they had planted some flowers and it would have to be in the spring.

Q You can have a sprinkler on in August, can't you?

A He planted some spring flowers.

Q Who did?

A Mr. Rich.

Q Mr. Rich planted some spring flowers, was he planting them at the time?

A Yes, he had just planted them and had the sprinkler on.

Q How did you know that, Mrs. Hansen?

A That time we come to the house he were just planting flowers.

Q He was in the process of planting flowers?

A Yes.

Q In any event after this conversation with Mr. Philipzyk, did you or, well let me confine myself to you, did you pass this onto somebody?

A Yes, I told Mr. Larsen.

Q Mr. Larsen is the office manager of one of the branches of Kellough Real Estate?

A Yeah, the Northeast Branch.

Q And following that, did Mr. Kellough ask to see you and Mr. Olthius?

A Yes.

Q And did you tell him what had occurred?

A Yes.

Q Do you know --

THE COMMISSIONER: When?

MR. MCGILLIVRAY: When, within how close to when this conversation took place was this?

A We told Mr. Kellough shortly after, one or two days after.

Q That is when you reported to Mr. Larsen, Mr. Larsen apparently talked to Kellough because you were asked to go and see Mr. Kellough?

A Yes.

Q Where did you see Mr. Kellough?

A Down in Mr. Kellough's office.

Q Is that somewhere different from where you were operating from?

A Yes, we were in the Northeast and Mr. Kellough in the head office.

Q Mr. Kellough is at the head office and you and Mr. Olthius and Mr. Larsen, where were you?

A Northeast Branch.

Q So you report to the manager there, then Mr. Kellough asks to see you. Did you and Mr. Olthius tell him what had occurred?

A Yes.

Q And you did this within a few days of when the incident did occur?

A Yes.

Q Do you recall how long it had been since Mr. Philipzyk had been working for Mr. Kellough's company?

A A year, I can't remember exactly.

Q You think he had been separated for something in the order of a year?

A Yeah, maybe a little over a year, I can't remember exactly.

Q Maybe a little over a year, you don't remember exactly?

A The time we talked to him on 101st Street.

Q Did you go into the hospital in November of 1965?

A Yes.

Q And underwent some surgery at that time?

A I had a big operation.

Q That, sir, is everything I wish to ask this witness. Perhaps my ... perhaps I should ask one more question, sir.

In this memorandum and you did not mention it in your direct evidence, you said that Mr. Philipzyk said Mr. Kellough owed him a substantial sum of money, that you said, but he wouldn't pay him and that you said, you say further "He said Mr. Kellough tried to blackmail him." You did not testify that today. What was that about or was that true, do you recall what was said on that score?

A I don't remember.

THE COMMISSIONER: This was written by the other gentleman.

A Mr. Olthius.

THE COMMISSIONER: So you substantially endorsed what he said, I suppose?

A I can't remember.

Q MR. MCGILLIVRAY: You don't recall that, but this is written. When this document was prepared did Mr. Olthius write it out and bring it to you and say sign this, Magda, or --

A No, we were sitting together.

Q You were sitting together and was Mr. Kellough present at the time?

A No.

Q He had asked you to write it out or at least to have it written out because you were going into the hospital?

A Yes.

Q And you and Olthius what, discussed the matter?

A Yes.

Q And then he writes it out and you both sign it?

A Yes.

Q You don't remember what the reference to --

A I can't remember after five years.

MR. MCGILLIVRAY: All right. Will you answer my learned friends, please, Mrs. Hansen?

MR. BOWEN EXAMINES THE WITNESS:

Q Mrs. Hansen, why did you go to the Rich house on the day in May or June?

A Because they had a private advertised in the paper and we phoned them and they told us to come and check it out.

Q They had it privately advertised and you phoned them and they asked you to come and check it out?

A Yes.

Q Had you ever been there before?

A No.

Q You had never been there before?

A No.

Q Had you parked in front of the house this day we are talking about?

A Yes.

Q And you were seated next to the curb, were you?

A Yes.

Q Mr. Philipzyk is a tall man, did he bend down and look in the window or what did he do?

A Yeah, he crouched down.

Q So his head was level with the window?

A Yes.

Q Was it a clear day?

A Yes, it was.

Q And he could see Mr. Olthius, could he, quite clearly?

A Yes.

Q And yourself. How long did the conversation go on?

A Not very long.

Q Can you estimate now?

A Approximately five minutes, I can't say exactly.

Q Was anything else discussed or talked about other than those items derogatory to Mr. Kellough?

A Yeah, business in general.

Q You talked about business in general?

A Yes.

Q About how the sales were?

A Yes.

Q Had you had much to do with Mr. Philipzyk while you were working with him?

A No.

Q Did you have any deals with him that you were sharing?

A No.

Q But you worked out of the same office?

A Yes.

Q And he knew you and you knew him?

A Yes.

Q When you talked to Mr. Kellough about this talk with Mr. Philipzyk, who did the talking, you or Mr. Olthius?

A We both told him what he said.

Q Did you tell him substantially what was in that letter?

A Yes.

Q That is Exhibit 15 you were shown?

A Yes.

MR. BOWEN: That is all, thank you.

MR. REDMOND EXAMINES THE WITNESS:

Q Mrs. Hansen, just a couple of questions. Were you still in the hospital on December 17th, 1965?

A Yes.

Q So that you were not able to be at the hearing at the Ethics Committee of the Edmonton Real Estate Board Co-operative Listing Bureau Limited in connection with Mr. Kellough's complaint?

A No.

Q You weren't there?

A No.

Q Can you tell me this, Mrs. Hansen, did you ever speak to the ombudsman about this case, did he ever come to you and ask you to tell him the facts?

A No.

Q You have never met him or spoken to him?

A No.

Q You have never given him an affidavit or written him

Q (cont) a letter about this case?

A No.

MR. REDMOND: That is all, thank you.

MR. CAVANAGH EXAMINES THE WITNESS:

Q Mrs. Hansen, did you sell the Rich's house in August of 1965?

A No, they bought privately?

Q In August of 1965, I thought you said your entry in the diary was that you had made a deal?

A No, I took them out to show them houses.

Q Oh, I see. You and Joe Olthius took them?

A Yes.

Q You and Joe Olthius worked together all the time?

A Yes.

Q And in the statement you have the address that you met Mr. Philipzyk at as 114th Avenue and 101st Street, is that wrong too?

A Yes, that is because we never checked back to the house.

Q What time of day was the statement prepared? What time of day were you preparing the statement, in the morning or afternoon or evening?

A Oh, I can't remember.

Q You can't remember? Can you remember where you prepared it?

A Yes, in our office.

Q In the Northeast office or the main office?

A In the Northeast office.

Q Had Mr. Kellough phoned and asked that it be prepared?

A Yes.

Q Who did he talk to?

A To Mr. Larsen.

Q To Mr. Larsen, and Mr. Larsen instructed you two then?

A Yeah, Mr. Larsen told the two of us.

Q Then did Mr. Larsen assist you in preparing it?

A No.

Q Well then, you sat there and helped Joe Olthius prepare this and the wrong month was put in?

A Yes, we didn't look in the diary so we had been mistaken with the time we took them out and the time he had it for sale.

Q When was the first time anyone ever suggested to you the date was wrong in this statement?

A They haven't been told us.

Q Oh, come, someone must have pointed it out that it disagrees with other evidence?

A Not that I can recall.

Q Did Mr. Kellough point this out to you in December,

Q (cont) 1965?

A No..

Q Is today when Mr. McGillivray suggested it the first time?

A Yes.

Q It has never been discussed with you at any time that the date is wrong in that statement?

A No.

Q I understand that you introduced Mr. Philipzyk to Mr. Olthius because Mr. Philipzyk did not know Mr. Olthius?

A Yes.

Q And Mr. Olthius didn't know Mr. Philipzyk?

A No.

Q Was any request made to write any of this out in May or June? Did anybody ask you to write it out then?

A No.

Q Have you ever given testimony concerning this since?

A No.

Q At any hearing of the Real Estate Board?

A No.

Q Has anyone from the ombudsman's office interviewed you concerning this?

A No.

MR. CAVANAGH: I see. That is all, thank you.

MR. MCGILLIVRAY EXAMINES THE WITNESS:

Q Just one thing, sir. Mrs. Hansen, as I understood your answers to my friend Mr. Cavanagh, it wasn't until I asked you the questions today that you weren't aware that there was a mistake in your statement when you talked about August and not the spring?

A No.

Q Is that what you were saying?

A Yes.

Q I asked you that because when I interviewed you last week, the matter was gone into then, wasn't it? We discussed this in the presence of other solicitors and other people and wasn't it pointed out to you that Mr. Kellough's complaint was made in June and he was complaining to the Real Estate Board about this very incident and that if he was complaining in June your statement in the letter that it was August had to be an error, this was discussed last week, wasn't it?

A I think there was but ...

Q I beg your pardon? What is the problem, Mrs. Hansen? I am not trying to embarrass you or anything.

A There was maybe discussed that day.

Q Pardon?

A Maybe that was discussed.

Q Maybe it was discussed that day, is that your answer? Mrs. Hansen, nobody is trying to trick you or anything. I just don't want a misunderstanding to occur here. I am simply suggesting to you that these matters were fully gone into last week. You were asked specifically how you remembered the spring and it was pointed out to you that Mr. Kellough could hardly have complained in the spring in respect to something that hadn't occurred until August.

A Yes, now I remember.

MR. MCGILLIVRAY: All right, thank you.

MR. CAVANAGH RE-EXAMINES THE WITNESS:

Q Do you have difficulty remembering as far back as one week ago?

A There was some mistake, you know, I have so much to think of I can't remember everything.

Q Well then, you can't remember the discussion with Mr. McGillivray last week very clearly, is that what I understand from this evidence?

A No, I can recall.

Q Yet you are now saying that you can remember clearly the spring of 1965, is this what you are telling us, is this it?

A That I can remember?

Q That you can't remember last week but you can remember 1965?

MR. REDMOND: Mr. Cavanagh, she just said she did remember last week now. You are putting words in her mouth.

MR. CAVANAGH: Do you have difficulty remembering last week?

A No, I can recall it now.

Q You can recall it now because you have been reminded, is that right?

A No, not because I was reminded. Now I think I can remember.

Q Because my friend just reminded you of it, is that right?

A No, I remember now.

Q Do you remember the date of the conversation because Joe Olthius reminded you and that is the only way you can fix it?

A No.

MR. CAVANAGH: That is all, thanks.

THE COMMISSIONER: Anybody else? Well, we will adjourn.
Thank you, Mrs. Hansen.

(WITNESS RETIRES)

MR. MCGILLIVRAY: Perhaps, sir, Mrs. Hansen might be

MR. MCGILLIVRAY: (cont) requested not to discuss her evidence with Mr. Olthius during the recess.

THE COMMISSIONER: Yes, you understand that?

MR. MCGILLIVRAY: Or indeed anybody.

THE COMMISSIONER: Nor should anybody else really.

HEARING ADJOURNED.

HEARING RESUMED.

MR. MCGILLIVRAY: I would like to call for my first witness Mr. Johannes Olthius.

JOHANNES OLTHIUS, sworn, examined by MR. MCGILLIVRAY:

Q Mr. Olthius, what is your occupation, sir?

A I am a real estate salesman, sir.

Q By whom are you employed, sir?

A By H. R. Kellough Real Estate, Realty.

Q How long have you been with H. R. Kellough Realty, approximately?

A Since 19, May of 1964.

Q Now, did you have some conversation with Mr. Philipzyk on an occasion when you were sitting in an automobile?

A That is right, sir.

Q I wonder if you would tell the Commissioner what you can about those conversations, when they occurred and generally what you remember about it?

A Well sir, we happened to check out a house on 101 Street and we went to this house, and parked our car there --

Q Do you remember the name of the people at the house?

A Yes, the name of the people were Rich, R-i-c-h, if

I am not mistaken, if I am not mistaken that is the spelling. So, we went to this house and parked the car. When it was still parked Mr. Philipzyk came from the same house that we were going to inspect and as it happened, this car was right in front of us at the time, so he come over, he noticed us in the car and he came over to our car. This was sometime in the summertime. We had our window down and we just started a casual conversation, you know, how business was more or less and then at the time Mrs. Hansen was with me at the time and she introduced me to Mr. Bob Philips.

Q You didn't know him at the time?

A I had seen him but I hadn't really talked to this man.

Q Mrs. Hansen then introduced you to him?

A Correct. So Mrs. Hansen said that I was employed by Kellough Realty, so then he said, well, I was with Kellough at one time, but he said I think I feel sorry to be with a firm like that. I said why should

A (cont). I be, he said well, Mr. Kellough is a man, he owes me a lot, an awful lot of money, I said, is that right, yes, he said, and he said I don't know how I can get it, the only way I can probably get it is perhaps to sue him. So, he said you ought to be careful of this man.

Q He said you ought to be careful with this man?

A That is right.

Q Referring to Kellough?

A Referring to Mr. Kellough. So, I said well, in what way, well, he said, perhaps he won't pay you the way he didn't pay me. Then he said Mr. Kellough owed him a lump of money, he didn't state any amount, and then he started off accusing Mr. Kellough of being a crook and one thing and another, I don't remember exactly what was said but he did state that Mr. Kellough was a crook. Then he said a man like Mr. Kellough should not be allowed to have an agent's licence and be in the real estate business.

Q Did he use the expression, crook?

A Yes, he did sir.

Q What had you or Mrs. Hansen to say to this?

A Well, I forget what my reply was, I simply told him that in my opinion Mr. Kellough was a reputable real estate firm, and that I would not be afraid that if I

A (cont) earned~~the~~ the money I would get it from Mr. Kellough. I stated Mr. Kellough would not try to pay me and no matter what he said I was not afraid of this, because Mr. Kellough would pay me what I had earned.

Q Now, you sir have been with/^{the}Kellough firm ever since?

A That is right.

Q And you are still employed by him?

A Still with Kellough Realty, oh yes.

Q Now, what time of the year was this, can you tell the Commissioner?

A It was during the month of May, I would say, I would say it was the latter part of May or perhaps the beginning of June, I would say that.

Q Why do you say that, sir?

A Well, I remember the time of the year pretty well, mind you it is a long time ago, but I pretty well remember the time of the year, I remember when this occurred, it was in the early part of spring, I would say.

Q When you were giving your evidence just a moment ago, you said that when Mr. Philipzyk came over to you, your window was down because it was summertime?.

A Well --

Q Is that consistent with what you are saying now?

A Well, it was a nice day, I remember that, because we

A (cont) had no overcoats, we were just in our suit coats.

Q All right, now, Mr. Olthius, I am showing you a memorandum which is marked Exhibit #15 in these proceedings, are you familiar with that document?

A Yes, I am sir.

Q In whose handwriting is it?

A That is my own handwriting.

Q That is your own handwriting, and does it bear your signature?

A Yes, it does.

Q Will you tell the Commissioner when that document came to be written out?

A This document was written in 1965, in the month of November.

Q Why, did it come to be written out then?

A Well, it was requested by Mr. Kellough to write this letter. Mr. Kellough was aware of the fact of the accusations that Mr. Philipzyk had made and it happened that Mrs. Hansen had to go to the hospital in the latter part, well, sometimes in November. So, Mr. Kellough asked us to put this in writing.

Q Why would he ask you in November, of 1965, even if Mrs. Hansen was going to the hospital to put this in writing?

A Well, I don't know, sir.

Q Were you not aware that a real estate, that would be the Edmonton Real Estate Board Co-operative Listing Bureau Limited was going to have a hearing later on?

A No, I did not know that at this time.

Q You did attend that hearing?

A I did.

Q As a witness?

A That is right.

Q And now in Exhibit #15, you state sir, that it was sometime in August of this year, you say that this was written out in November, a matter of a few months after August, you have told the Commissioner in fact the occurrence with Mr. Philipzyk later, was in late May or June, how do you account sir for the discrepancy that appears to be in the statement which you gave in November, that is oh, some, almost four years earlier than the evidence you are giving today, perhaps closer to five years?

A Well, I would say that at the time I wrote this letter, I remember we paid a visit to these people, the same people that we talk about in this letter, sometimes in August, it could be that I got mixed up with the date, I could have gotten mixed up with the date when I wrote this letter.

Q Now, Mr. Olthius, in this letter you state that Mr.

Q (cont) Philipzyk, that Mr. Philipzyk stated that he was very glad he had settled the relationship with Kellough Realty, and said he could not understand how we could work for a man like Mr. Kellough, he then went onto say how he was treated in regards with his licence. Was there some discussion about the licence, that you recall today?

A I don't remember that sir, it is a long time ago, actually it is a very long time ago.

Q Perhaps, I have misread this to you, because I stopped in what appears to be the middle of the sentence and I am not doing your composition justice, and --

A Yes.

Q -- you stated he then went onto say how he was treated with regards to his licence, insurance money and commissions and stated that Mr. Kellough owed him a substantial sum of money but he would not pay him. He said Mr. Kellough tried to make, tried to black-mail him, that seems to be a complete sentence sir, do you recall the discussion about licence, insurance money and commissions --

A I think that point was brought up, the discussion that took place, I cannot remember.

Q All right sir, now, you further say in your statement,

Q (cont) I'm sorry sir, I should be around here, at least the witness would be more or less facing this way, I read you, he said Mr. Kellough tried to blackmail him, is this what you said earlier, what if anything can you tell us about that today, sir?

A Well, not very much. I never read that since I have written it. I had no copy of it so I know, well, I know he said some of these things but what my reply was to that, I couldn't say, I do not remember.

Q Do you recall what time of the day, what time of the day it was that this conversation took place?

A Well, as far as I can remember it was in the forenoon, that is the usual time that we check out our houses and anything that has to be inspected, I would say around 10 or 11 o'clock.

Q What sort of a car were you and Mrs. Hansen in?

A I was in my own car, I think I had a 19, I forget now, I had a Pontiac, I forget the year, but I believe it was a 1958 Pontiac.

Q Do you remember what colour it was, sir?

A My '58 car was a blue and white one, blue with a white top.

Q Now, tell me after the conversation, these conversations, what if anything did you do relative to telling anybody about them?

A Well, we went to the office shortly after that, I didn't talk about it too much, it was quite a blunt statement that Mr. Bob Philips made against Mr. Kellough, then I went into the office and told Mr. Larsen.

Q You told Mr. Larsen, as I understand he is the office manager where you and Mrs. Hansen work?

A That is correct.

Q Then what occurred as far as you were concerned?

A Well, then in turn Mr. Larsen told Mr. Kellough about what took place.

Q And what was the result of that?

A Well, for a while we didn't hear too much and then, but then Mr. Kellough asked us to come to his office and speak to him about this.

Q That is Mr. Kellough asked you to come to his office --

A Yes, to the Main Office.

Q That is where, downtown?

A Yes, to the main office downtown.

Q And what did you do, did you and Mrs. Hansen go there?

A Yes, we did.

Q Did you then tell him what had occurred?

A More or less what had occurred, what had occurred on that morning.

Q Are you aware, well, first of all, how long was that

Q (cont) sir, to the best of your recollection, after the incident itself?

A I would say, as far as I can remember, I would say approximately two weeks.

Q About two weeks later?

A Yes.

Q Did you learn at that time that Mr. Kellough wrote a letter of complaint to the Edmonton Real Estate Board Co-operative Listing Bureau Limited?

A No, I wasn't aware of that at that time.

Q You didn't know that?

A No.

Q All right sir, now, that is everything, sir, that I wish to ask you. I wonder if you would answer my friends.

MR. BOWEN EXAMINES THE WITNESS:

Q Mr. Olthius, how long have you been in the real estate business?

A In total years, I would say about, since 1956 so that is 14, 15 years.

Q That is 14 years?

A Right.

Q Now, in Exhibit #15, which Mr. McGillivray showed you, it mentioned the address 101 Street and 114 Avenue, is that not correct?

A That is correct.

Q Have you ascertained since this hearing and so forth where this house actually was?

A Yes, we did sir.

Q Where is it?

A It is on 116 Avenue and 101 Street.

Q That is two blocks north?

A Two blocks north, that is right, sir.

Q Is there anything you -- anything unique about this house by which you can identify it as being the house that you were in front of?

A Yes, I remember the house, it was a house with quite a high peak on it, there was quite a high peak in the centre, and three or four gables on this house, it is quite vivid, the house is quite vividly in my mind.

Q Is there any other houses like it on the street or on the block?

A They are all fair or quite large houses in this block, I think this is the only one of this type.

Q When you wrote this letter, Exhibit 15, did you go back to get the exact address of this house?

A Not at the time of the letter, not at the time that the letter was written, no.

Q When were you back since?

A About two weeks ago.

Q Do you recall which side of the car Mr. Philipzyk was, on which side of the car he was when he was talking to you?

A On the passenger side of the car.

Q Who was driving?

A I was driving, myself, and Mrs. Hansen was sitting next to me.

Q What position was Mr. Philipzyk when he was talking to you?

A Oh, he was on the sidewalk at the time when he talked to us and Mr. Philipzyk is quite tall so he squatted down and he talked through the window.

Q Now, you are still employed by Kellough's?

A Yes sir.

Q You have been since 1964?

A That is correct, sir.

Q Now, what if anything did Kellough supply to you at the end of each month, as to how much you earned and how much you draw?

A Well, every month we are supplied with a statement of our actual earnings, pendings, it is all on a sheet.

Q Do you get a copy of this?

A Yes, we do.

Q And was this the situation since you have been with

Q (cont) Kellough?

A Ever since I started.

Q What period of time does this cover, the previous month?

A The month previous.

Q What time of the month do you get it, ordinarily?

A We usually get this statement, I would say, somewhere between, before the middle of the month, the 8th or 10th.

Q That is the 8th or the 10th of the succeeding month, the statement covers --

A That is right.

Q What do you do with this statement?

A I keep mine on file, every month I put it on a file.

Q What happens if you disagree with something on the statement?

A Well, to my knowledge never has it happened yet, oh, I believe once, I can't recollect, I went over to Mr. Larsen and pointed out is that correct and when we checked it out to my satisfaction --

Q Mr. Larsen being your superior?

A That is right.

Q Now, in addition to this monthly statement, when you make a sale for Kellough's, is there a control sheet made up?

A Every time you bring in a deal, and once the cheque is certified, we hand it over to Mr. Larsen's secretary then the control sheet is made and immediately and we get a copy of the control sheet.

Q You get a copy of the control sheet?

A Right.

Q Now, what does the control sheet show as far as your interest?

A Well, it shows the sale of the property and the breakdown of the commission and the money I have earned in connection with that sale.

Q Is this done with every sale that you have made?

A That is right.

Q So, you know at the time how much commission is being allocated to you for your service?

A That is right.

Q I see.

A I know it right away, one day or two days, perhaps.

Q I am showing you what purports to be a control sheet, H. R. Kellough Realty, is that the form you are given?

A Yes sir, that is the exact form given to us.

Q This is nothing to do with you?

A No.

Q This is the form, and on the bottom right-hand corner

Q (cont) it shows the division between the various listing agents of the company, and the over-ride and so forth?

A That is correct.

Q So, that on every sale you are very much aware of what was coming to you?

A Yes.

Q Could we have that entered sir?

MR. SECRETARY: Exhibit 16.

CONTROL SHEET KELLOUGH
REALTY, MARKED EXHIBIT #16.

MR. BOWEN: That is all of the questions that I have, thank you.

MR. REDMOND CROSS-EXAMINES THE WITNESS:

Q Mr. Olthius, did you attend or give evidence at the hearing before the Ethics Committee of the Edmonton Real Estate Board Co-operative Listing Bureau Limited concerning this conversation with Mr. Philipzyk?

A That is correct, sir, yes I did.

Q Have you a recollection today of what happened at that hearing?

A I have a faint recollection, yes.

Q Well, if I ask you something about it and you don't

Q (cont). remember, don't be embarrassed to tell me but if you don't mind I will ask you a few questions about it.

First of all, I gather that you were asked to tell the story of the conversation of Mr. Philipzyk?

A That is right.

Q Now, when you were asked to give your evidence did you get a full opportunity to say all that you wanted to say about the conversation?

A Oh yes, I did.

Q And when you had said what you had to say about it, did some people at the hearing ask you some questions as --

A I don't remember, I don't know.

Q Well, perhaps I can help you a bit, that statement that has been shown to you, the handwritten statement of yourself, and of course of Mrs. Hansen was that produced at that hearing?

A That is right.

Q Do you remember who brought that forward

A I think it was Mr. Kelly Haugen, I am not positive.

Q Is it possible it was Mr. Kellough?

A It could be.

Q You don't really remember?

A I, I am not positive.

Q Do you remember somebody asking you questions about the date that appeared in that document, someone asking about whether it was in August or some other time that you had that conversation?

A No, no date was mentioned whatsoever at that time.

Q Do you remember that there was Mr. Walsh at the hearing?

A I do remember that, yes.

Q Do you remember Mr. Walsh asking you questions about the date, about the date when your conversation took place?

A No, I don't remember this.

Q You don't remember that. Do you remember Mr. Walsh making a statement and taking part in the hearing at all?

A Yes, I do.

Q Do you know what he was doing there?

A Well, not exactly, he was there on behalf of Mr. Philipzyk, I would say.

Q On behalf of Mr. Philipzyk?

A Yes.

Q Did you stay for the whole hearing?

A I did, sir.

Q Were you there when Mr. Philipzyk told his story about

Q (cont). this matter?

A Yes.

Q Did he get a full chance to say what he wanted to say about it?

A Yes, he did.

Q Do you happen to recall how long the hearing was?

A Oh, I would say about an hour, I don't remember the exact time.

Q Do you remember what time of the day that it took place?

A No, I don't know, I think that it was in the evening but I am not positive as to that.

Q You can't remember whether it was an hour or perhaps longer than that?

A Not really, it wasn't, it was not too long, perhaps an hour.

Q Possibly two hours?

A It could have been, it could be.

Q Now, generally what kind of a hearing was this, you told me that you had a chance to tell your story and Mr. Philipzyk had a chance to tell his, it has been said that at some point tempers became heated, did this happen at the beginning or partway through or near the end of the hearing or --

A This part came pretty well at the end of the meeting.

- Q Specifically do you recall an exchange between Mr. Philipzyk and Mr. Larsen?
- A There were a few words said, yes.
- Q And that was near the end of the meeting, is that correct?
- A Near the end of the meeting, right.
- Q Do you remember anything more about that exchange between Mr. Philipzyk and Mr. Larsen apart from the fact that there were a few heated words, do you remember anything else about it?
- A Well, the only thing that I do remember is Mr. Philipzyk was getting on his feet and I think that he was reading from a piece of paper, this I'm not sure of, but he denied even meeting me then, he called Mr. Larsen a liar.
- Q Did Mr. Larsen express some view of Mr. Philipzyk's comment?
- A Mr. Larsen said, pardon me, you cannot call me a liar.
- Q And --
- A And I think he said this twice, in fact.
- Q Did he suggest that it was Mr. Philipzyk that was the liar and not Mr. Larsen?
- A No.
- Q Mr. Philipzyk was on his feet, what about Mr. Larsen, was he standing up at that time?

A He was seated at the time that Mr. Philipzyk spoke to him, but when Mr. Philipzyk called Mr. Larsen a liar, Mr. Larsen just stood up off of his chair on his feet stood up like this, that is all I can remember, there were no firing words or statements in any way.

Q Now, do you remember that after that exchange Mr. Philipzyk went out of the room?

A Yes, very shortly afterwards.

Q Did someone go with him, do you remember?

A Yes, he did not go alone, I think it was Mr. Kelly Haugen that took him by the arm and led him out of the room.

Q Do you happen to remember how long the two of them were out of the room?

A No, the meeting was shortly adjourned, shortly after this incident and perhaps it would be five minutes.

Q They would be out then, perhaps five minutes?

A I would say so, yes.

Q You say that the meeting adjourned shortly after Mr. Philipzyk came back?

A It had adjourned before Mr. Philipzyk entered the room.

Q Did you mean, at that point, that you left?

A Yes.

Q You don't know what happened after that?

A No, I do not remember anything about it.

Q Now, once this hearing was completed, were you ever contacted by the ombudsman or anybody in his office and asked to give your version, to give the discussions with Mr. Philipzyk?

A No, never at any time.

Q Have you given, ever given a written statement afterwards or a verbal account to the ombudsman or to anybody in his office?

A No, I haven't.

MR. COMMISSIONER: You had nothing to do with the ombudsman?

A Nothing.

THE CHAIRMAN: You don't know where it is, I suppose, or anything else?

A No.

MR. REDMOND: That is all of the questions that I have, thank you Mr. Olthius.

MR. CAVANAGH EXAMINES THE WITNESS:

Q I take it that prior to that meeting in the car you had never been introduced, you had never met Mr. Philipzyk?

A That is correct, sir.

Q Yes, now, have you discussed your evidence with someone else prior to this?

A Regarding to this letter?

- Q Yes.
- A No, I haven't.
- Q Surely, with Mr. McGillivray if he was doing his job.
- A Oh, yes, prior -- last week, yes.
- Q Have you discussed it with other persons like Mrs. Hansen and Mr. Kellough?
- A Not really, no, not after the letter was written.
- Q I see. Where was the letter written?
- A In my office where I work.
- Q Where is that?
- A In the Northeast branch, on 93rd Street and 111th Avenue.
- Q And who was there while you were writing it?
- A Mrs. Hansen and myself, we were both in the office.
- Q Was Mr. Larsen there too?
- A Not in the office when I wrote this letter.
- Q Who asked you to write it?
- A Mr. Larsen asked me at the request from Mr. Kellough.
- Q I see. Now, you say that the letter is wrong about August, do you?
- A Yes sir.
- Q Your memory in November was not very good, is that what you are telling us?
- A Well --
- Q In November of 1965?

A Well, at the time that I wrote the letter I never gave, actually, any particular thought to the actual date.

I think my concern was more for what was said than the actual date which I have stated in my letter.

Q Now, if I understand your evidence correctly, you can't remember whether there was any conversation about a licence, at all?

A I don't remember this, I don't remember this at this time, no.

Q Nor, nor can you remember anything about conversation, any conversation about insurance?

A No.

Q Nor can you remember anything about Mr. Kellough trying to blackmail Mr. Philipzyk?

A No, I can't.

Q Well, was somebody telling you what to write?

A No, Mr. Kellough, told me, told me to write what my thoughts were, told me to write my thoughts down as to what happened on this.

Q And did he remind you what your thoughts were?

A No.

Q From previous conversations?

A He told me to write down exactly, more or less, to put down in writing what took place with Mr. Philipzyk.

Q Hmm,mm. The reason you now say, is this the first

Q (cont) time you said this conversation, in preparation for this hearing and at this hearing, this is the first time you said that the conversation took place in May?

A Yes, it was two weeks ago I told this^{to}/Mr. McGillivray and this was at the office.

Q Whose office?

A Mr. Kellough's office.

Q When was that?

A Two weeks ago.

Q How did that come about, how did you come to say that it was in May, two weeks ago?

A Well, as I say the date I don't remember that vividly but --

Q Well, did someone point out to you that Mr. Kellough was complaining earlier in August?

A Mr. Kellough knew what had taken place more or less.

Q All right, did you give evidence at the hearing in December of 1965 concerning this date?

A No, no I didn't.

Q No one asked you~~about~~ about the date then?

A No.

Q So that in December of 1965, Exhibit 15, was just handed in?

A That is correct.

Q That letter of yours, signed by you and Mrs. Hansen?

A That is right.

Q You just handed it in and no one questioned you about it?

A No, at the time the letter was placed as an exhibit, they asked me if that was my letter. I said yes it is.

Q Who asked you?

A Whoever took the chair, at that time.

Q Do you remember/who took the chair?

A No, I believe it was Mr. Winterburn, I am not positive as to this.

Q Do you remember who was present at that meeting?

A Who was present?

Q Who was there?

A Well, quite a few, Mr. Winterburn, Bruce Graham, Mr. Cummings, Mr. Bruce Graham, oh, I mentioned that, Mr. Shatski. And there was more there, but I can't remember the names.

Q How large of a committee was this, do you know?

A I would say about 12.

Q 12?

A 10 or 12.

Q Mr. Winterburn was presiding?

A Yes, I think with regards to the Ethics Committee.

Q Was Nels Larsen there?

A Yes, he was.

Q Was Norm Murray there?

A Yes, he was.

Q And Homer Kellough?

A Yes, he was.

Q Now, I suggest to you that during the meeting, wait a minute, first we better leave this, you just hand, you handed the letter to someone, you're not sure who it was, and that is all of your evidence, is that right?

A Yes, this letter was sent to the board.

Q Was it sent or handed?

A I didn't hand it myself, I handed it to Mr. Larsen and Mr. Larsen in turn to Mr. Kellough and that was the way it was.

Q So, this is the extent of your evidence to the board meeting on December 17th, 1965 was yes, that is my letter, that is all of the evidence you gave?

A Yes. The letter was read there at the time.

Q The letter was read, and you were asked if it was your letter and you said yes it was and that was all of the evidence you gave?

A Yes.

Q Mr. Walsh didn't question you?

A I don't remember Mr. Walsh questioning me, but Mr. Philipzyk did.

Q He did?

A He denied the whole thing.

Q No no, did he ask you any questions?

A No, not personally.

Q He contradicted you?

A Right.

Q When he had his say?

A That is right.

Q Now, while he was having his say, I understand Mr. Larsen and Mr. Philipzyk were physically stopped, or prevented from fighting?

A No, that is not correct.

Q Well, in any event Mr. Philipzyk was removed from the room before the hearing was over, isn't that right?

A He was removed from the room, yes.

Q Before the hearing was over?

A Well, it was just about finished, sir.

Q Before it was over?

A That is right.

Q And then when he got outside they made their decision?

A No, no. That is not correct.

Q When did they make their decision?

A At the time that Mr. Philipzyk was present.

Q Oh, they made their decision while they were still in the same room?

A What decision?

Q All right, what decision are you talking about?
To put him out?

A No. The meeting got a little loud and Mr. Philipzyk got up and he used a few rough words I would say, he called Mr. Kellough a liar, he called Mr. Larsen a liar.

Q Did Mr. Kellough call Mr. Philipzyk a bastard?

A He could have said this.

Q It was getting pretty hot then, wasn't it?

A Well, it wasn't said in a sharp tone of voice.

Q Oh, I beg your pardon. All right, but then the decision was made to put him outside and the meeting was continued?

A No, no.

Q Well, I am trying to get at it, when was the decision made?

A The decision was made, the meeting was just about over and then they thought Mr. Philipzyk should go out of this meeting.

Q Well, he merely was in a fight, wasn't he?

A Not really in a fight.

Q Wasn't there any threats of physical violence --

A No threats, no threats at any time.

Q All right, then they thought he should go out, then what did they do?

A Well, then the meeting was adjourned.

Q Well, when was the decision reached?

A At the time Mr. Philipzyk was in this room.

Q What was the decision?.

A Well, everything was discussed which should have been, what should be discussed.

Q You don't remember, do you?

A I don't remember what all was discussed, because the meeting was pretty well finished, the meeting was pretty well finished when Mr. Philipzyk was told to leave the room.

Q You were at a meeting, where people were calling each other liars and bastards and --

A Well, it wasn't to the extent that everybody was calling everyone else a liar and bastards, I wouldn't say, I wouldn't go that far.

Q But now, you sit here and you tell us that you can't remember what happened, what vividly happened in May of 1965, you can't remember that exciting meeting, is that right?

A That is right.

Q That is all, thank you.

MR. MCGILLIVRAY RE-EXAMINES THE WITNESS:

Q Just one question, sir. I am a little confused, I thought, you told my friend Mr. Redmond that you were asked to tell your story of the discussion that occurred with Mr. Philipzyk, did I understand that correctly?

A Yes.

Q And then I thought you told my friend Mr. Cavanagh that your evidence consisted solely of you acknowledging that this was your letter, now, I find that a little conflicting. I wonder if you can clarify it?

A Well, I was asked at the time whether this was my letter, which I had prepared, I said yes, it was. Then a short discussion followed with regards to this letter.

Q Well did somebody say to you or not, will you just tell us in your own words, what occurred, is this true or how did, I mean tell us --

A Yes, Mr. Philipzyk, at the time, as I said before denied the whole thing. So I charged him, do you deny the fact that you ever met me, he said yes, he said yes he did. I said you mean to tell me that I am telling a lie in this letter, you're denying the fact that you ever spoke to me at that time, that was

A (cont) all that was said.

Q And Mr. Philipzyk stuck to that and said you were telling a lie?

A Yes.

Q All right, thank you sir.

MR. REDMOND RE-EXAMINES THE WITNESS:

Q Sir, I wonder if I might ask a few questions arising out of that. Mr. Olthius, I want to be clear on your part in this hearing. Now, you attended the hearing of the board, I asked you earlier if you had told your story at the meeting with Mr. Philipzyk, now, would you please make this clear, did you tell in your own words, speaking to the tribunal what had happened in reference to Mr. Philipzyk, or did you not?

A Yes, I did.

Q Now, did you say that out loud or did you simply acknowledge the letter was right?

A I acknowledged that the letter was right, now, I don't remember whether I went into it in detail, I don't remember this.

Q Well, do you remember whether you told the story in your own words at the hearing or not, did you explain to them what happened when you met Mr. Philipzyk in the car that day?

A No, I think just by way of letter.

Q You don't remember saying anything about that at the hearing?

A I don't remember.

Q You just don't remember is that it?

A Right.

Q All right.

MR. BOWEN RE-EXAMINES THE WITNESS:

Q If I may, one moment Mr. Commissioner?

THE COMMISSIONER: I really think that we have exhausted this, but go ahead, my patience is close to being -- but go ahead.

Q MR. BOWEN: Mr. Larsen stood up and sat down?

A That is correct.

Q This is when he was being called a liar?

A That is right.

Q Now, he was on one side of the table and Mr. Philipzyk was down at the other end, wasn't he?

A That is correct.

Q Did he take any steps towards Mr. Philipzyk at all?

A No sir.

Q He stood up and sat down, and sat down by the table?

A That is correct.

Q Thank you.

MR. MCGILLIVRAY: That is everything, thank you sir.

I would like to call Mr. Homer Kellough.

(WITNESS RETIRES)

HOMER R. KELLOUGH, sworn, examined by MR. MCGILLIVRAY:

Q What is your occupation, sir?

A Realtor.

Q And how long have you been in that business?

A 26 years.

Q And do you operate an agency, here in Edmonton?

A Yes sir.

Q What is the name of that --

A Kellough Realty Limited.

Q And do you have more than one office?

A Yes sir.

Q How many?

A Six.

Q Now, you know Mr. Philipzyk?

A Yes sir.

Q When he was in your employment, was that the name that he used, how was he known by your associates?

A Robert Philip.

Q Bob Philips?

A Bob Philips.

Q Either Mr. Philipzyk, or Philips, would you identify him?

A Yes, that is him.

Q Now, when did you, can you tell the Commissioner,

Q (cont) when Mr. Philipzyk came to be employed by you?

A Oh, I would say in 1960.

Q And when sir was the relationship between him and your firm separated, severed?

A Well, you are working with a poor memory, sir. I think that it was in the spring of 19 --

THE COMMISSIONER: Just a moment, push that away from you a little, it echoes.

A I'm sorry.

Q MR. MCGILLIVRAY: Now, you have had sir, a synopsis of your ledger sheets prepared --

A Yes sir.

Q It was originally submitted to the Edmonton Real Estate Board with a letter that you wrote?

A Yes sir.

Q I wonder now, Mr. Kellough, is this a synopsis of the statement of account between your firm and Mr. R. J. Philips as described here?

A Yes sir.

Q May this be marked, sir?

SYNOPSIS OF LEDGER SHEET,
MARKED EXHIBIT #17.

STATEMENT OF PHILLIP'S
EARNINGS, MARKED EXHIBIT #18.

Q The first entry on here, the first entry is January the 10th, 1961, and it shows an advance, I take that to be an advance to Mr. Philipzyk of \$200 --

A Yes sir.

Q And then on January 26th, another advance of \$100, and do I take it that the left-hand column here, shows advances or things expended for Mr. Philipzyk's benefit?

A Yes sir.

Q And the right-hand column shows the credit to him for earnings that he had made?

A That is correct.

Q And this document, the last entry subject to one that is apparently made later, and we will discuss that in a minute, is May the 29th, 1964, is that correct sir?

A That would appear to be correct, yes.

Q Do I take it then that Mr. Philipzyk was in your employment from January of 1961 until somewhere around May of 1964?

A Yes sir.

Q Now, Mr. Philipzyk's earnings may be relevant, I have had prepared a copy of this document with additions of what was earned monthly, this is a copy of this with the totals put in and the averages for the years

Q (cont). calculated and, for instance, during the year 1961 the average monthly earning was \$240, in 1962 it was \$296, and in 1963 they were \$194, and in '64 Mr. Philipzyk left in May -- may this be marked, sir. This is Exhibit #17, a synopsis of the ledger sheet earnings.

Q Now do you know any of the circumstances, as I understand, under which Mr. Philipzyk came to leave your employment in the spring of 1964?

A Very little sir.

Q Well, do you know anything?

A He gave a verbal resignation to the branch manager, he had worked in three or four other different branches but I only knew of him leaving when Mr. Larsen, the Northeast Branch, of the Northeast Branch, told us that we would have to return his licence that he had left.

Q You didn't direct that he be let go?

A No.

Q I see. In the spring of 1964, did Mr. Philipzyk find it necessary for reasons of health to be away from business for a couple of months?

A Not that I can remember.

Q I see. In any event, Mr. Philipzyk left your employment in the spring of 1964, what was the next connection

Q (cont) if any, that you had with him?

A Through a manger, Mr. Nels Larsen, in the Northeast Branch came into me with a story, that he was very perturbed about, he said that two of his employees had encountered Mr. Philipzyk and that the conversation certainly wasn't favorable to our company and that he was disturbed, and that he felt that the two sales personnel were very greatly disturbed and I requested Mr. Larsen to have these two people come into my office and see me.

Q Those two persons were who?

A Magda Hansen and Joe Olthius.

Q The last two witnesses here?

A Yes, well I wasn't in the room, sir.

Q Oh yes, that is right. They told you, they told you what they said had occurred?

A Yes.

Q What did you do as a result of that sir, if anything?

THE COMMISSIONER: When was that?

Q MR. MCGILLIVRAY: I beg your pardon, sir?

THE COMMISSIONER: When was that?

A This was in, I establish the date by a letter within two or three days by a letter which I wrote to the board.

THE COMMISSIONER: What month?

A That was in June.

THE COMMISSIONER: In June?

A It had to be before the 8th of June, 1964 between the 1st and the 8th of June.

THE COMMISSIONER: You fixed the time on the latter part of May or the early part of June?

A Yes.

MR. MCGILLIVRAY: You say '64, sir, perhaps you'd better look at your letter?

A Yes.

Q You say '64, sir, perhaps you'd better look at your letter once again, this is the original letter to Mr. Kelly Haugen, Executive Secretary, Edmonton Real Estate Board, and --

A I would like to correct myself, it was in '65.

Q Is this the letter sir, to which you refer?

A Yes, June 8th, 1965, yes sir.

Q And following, this letter followed your discussion with Mrs. Hansen and Mr. Olthius?

A Yes sir.

Q And this letter was written how many days of your discussion with them?

A I believe the same day, I believe that on the same day I contacted Mr. Haugen of the Board and told him about what was happening --

THE COMMISSIONER: It doesn't much matter a day or two,
does it?

MR. MCGILLIVRAY: No sir.

Q MR. MCGILLIVRAY: Well, at or about that time?

A Yes.

Q All right, now, this letter sir reads and this constitutes the initial complaint to the board, I think that maybe it should be read, it is addressed to Mr. Kelly Haugen, Executive Secretary, Edmonton Real Estate Board and reads Dead Kelly - re Robert J. Philipzyk"At the outset, I should explain that we kept this man on our staff due only to the fact that his wife was extremely ill and the firm carries a very comprehensive policy on its staff members through Aetna Life. The branch managers were unable to get along with him. They were extremely critical of his attitude to the public and his attitude around the office, but by switching him to different branches I was able, in a measure, to keep peace in the family. You will understand my reason for the efforts on his behalf when I explain that he drew \$2,564.52 from Aetna although the University Hospital tells me there is an item of \$820.00 still unpaid. In a couple of cases, we insisted that Mr. Philipzyk endorse the cheques and we mailed them onto their proper source.

Q (cont). "His employment began with Trotter, McIntyre and Kellough on October 28th, 1960 and he owes that firm \$165.00. He transferred to Kellough Realty on January 10th, 1961 and I am enclosing an exact copy of his ledger sheets which will show you the money that he drew out as against the money he earned. This leaves him owing the company \$1,368.97. There is one commission that still might come in which you will find on the back sheet amounting to \$142.50, but all told, I advanced him \$165.00 in the old company for which company he earned nothing, and \$1,368.97 in Kellough Realty, and by having him covered by Aetna he received an additional \$2,564.52, and all this apart from being paid in full for everything he earned.

I have heard rumors that this man is running around telling people that I owe him money. I haven't much time to listen to rumors so I paid no attention. The other day he met two of my employees, who I value highly, and explained to them that the only way he could get the money that I owed him would be to sue me. If he has the gall to tell this type of lie to two of my employees, I shudder to think what he's capable of.

If this does not constitute a breach

Q (cont) of ethics of the rankest type after what I have done for this man, I would see little or no point in us attempting to adhere to any type of a code of ethics. In any event, I want it stopped. The figures I gave you can be substantiated and I will produce my branch managers and those sales personnel who are involved and I will gladly open my books to the Board's auditors. There is a good deal more that could be said but I will not make any further comment at this time except that I would appreciate knowing what action, if any, that you are going to take because if it does not come within your jurisdiction then I will attack the situation through the Commissioner of Real Estate using every legal resource that the law affords me to put a stop to this business once and for all.

Very truly yours, H. R. Kellough
Realty Ltd.

H. R. Kellough, President and
Managing Director."

And that statement was accompanied
with Exhibit 17, 18, 17 sir.

THE COMMISSIONER: I guess we should now have a break.

HEARING IS ADJOURNED.

HEARING IS RESUMED.

Q MR. MCGILLIVRAY: Mr. Commissioner, may we have this letter entered as Exhibit #19.

LETTER TO MR. HAUGEN FROM
MR. KELLOUGH, DATED JUNE
8, 1965, MARKED EXHIBIT #19.

Q MR. MCGILLIVRAY: Mr. Kellough, you have just told the Commissioner, that after having a word with Mrs. Hansen and Mr. Olthius, you wrote Exhibit 19, your letter, June, 1965, you wrote the letter on June 8th, 1965 to Mr. Kelly Haugen?

A That is right.

Q What next occurred?

A Just before the letter, I had discussed this with Mr. Haugen on the telephone and he pointed out to me something that I already really knew, that I had to put the complaint in writing, there was nothing he could do with just my conversation over the telephone and that is why my letter starts in such an abrupt way, there. I hung up the phone from talking to Mr. Kelly Haugen and called in my secretary and I dictated that letter. That was within a day or two of talking to Mrs. Hansen and Mr. Olthius.

Q Now, sir, I asked you earlier what you had to do with Mr. Philipzyk next after he left you in the spring of

Q (cont) 1964, you have spoken of what has occurred in June of 1965, when you made your complaint to the Real Estate Board, I followed up the first of that complaint but before that, did you receive a letter from a solicitor representing Mr. Philipzyk?

A Yes sir.

Q May I have that letter please. This is a letter written November 16th, 1964, did you receive that letter?

A Yes sir.

Q And did you reply to that letter on the 3rd of December, 1964, a copy of which I show you?

A Yes sir.

Q May these letters be marked, sir.

LETTER DATED NOVEMBER 16,
1964, MARKED EXHIBIT #20.

COPY OF LETTER FROM H. R.
KELLOUGH TO MACDONALD &
SPITZ, MARKED EXHIBIT #21.

Q I will read these letters to you. Firstly a letter from Macdonald & Spitz dated the 16th of November, 1964. This is addressed to Kellough Realty Ltd., the address, attention Mr. H. R. Kellough, "Dear Sir:

Q (cont) "Re: Robert J. Philipzyk

We act for Mr. Bob Philipzyk. Our client has requested us to obtain from you a statement of account dealing with commissions earned by our client and all sums paid to our client and further a copy of the agreement in terms of which our client was employed by your firm.

We should be pleased to receive the above mentioned at your earliest convenience.

Yours very truly, Macdonald & Spitz."

MR. MCGILLIVRAY: And you replied to that letter by this document, your letter of the 3rd of December, 1964 and this reads:

"December 3, 1964.

Macdonald & Spitz, Barristers,
Solicitors and Notaries Public, Weber Building,
10013 - 101A Avenue, Edmonton, Alberta.

Attention: Mr. Derek Spitz:

Dear Sir: RE: Robert J. Philipzyk
(Phillips)

At the outset I must apologize for not having written you immediately that I returned from your office with the above mentioned parties statement. The truth of the matter is I layed it on my desk and it got lost in the shuffle here and I only

Q (cont) got down to it this morning.

I believe this statement should be self-explanatory as it is an exact replica of our ledger. You will note the statement attached showing some pending credits in the amount of \$278.22. As this money comes in it will be deducted from the \$1,504.69.

I might point out that I feel I have taken an unnecessary amount of abuse from a man that I tried to do the best I could for. His contention is apparently that "I" owe him money. I see only one way of having this aired and that is in a Court of Law so my suggestion is that I sue Mr. Phillips for what he owes me and I would appreciate knowing if you are willing to accept service on his behalf.

Very truly yours, H. R. Kellough
Realty Ltd. Homer R. Kellough, President and
Managing Director."

And was that letter sent to Mr. Spitz?

A Yes.

Q Did you obtain a response from that solicitor as to your inquiry as to whether he was prepared to accept service on behalf of Mr. Philipzyk?

A I called on him sir and Mr. Spitz said no he would take no part of it.

Q And did that letter, was that accompanied by a statement of the type that is in evidence here, showing the statement of account between you and Mr. Philipzyk?

A The one I sent to Mr. Spitz, yes.

Q All right sir.

A Identical.

Q Well --

A I beg your pardon, I withdraw that, it was not identical, at that time there was I think \$275 coming and that was sometime later credited.

Q Now, one thing that also occurred earlier, I suggest Mr. Kellough and that is that after Mr. Philipzyk left your employment, I believe he went out to the coast and was there for some time, I say sometimes, perhaps a matter of some weeks, and then he came back to Edmonton and sought to go into business himself as an agent, is that correct?

A I only have that as hearsay sir.

Q All right. Did you not have an inquiry from the bonding company as a former employee whether you could recommend him for a bond?

A I don't believe, sir, I had a phone call and at the time I answered the call I thought it was from the superintendent office.

Q Yes?

A I could be wrong in this, but they asked me if I could recommend Mr. Philipzyk for an agent, as a , for an agent's licence.

Q Yes?

A I said no, I could not and I still could not.

Q You say that you don't know who it was that was calling you, you thought it was the superintendent?

A I thought -- I thought it was, yes.

Q I see. Now, shortly after Mr. Philipzyk left the, the first thing that occurred, you received a telephone call and you said you can't recommend Mr. Philipzyk for a real estate agent licence?

A Correct.

Q This would be in assuming, he left in May of 1964, this would be within a month or so of that?

A I would say yes, sir, in that neighbourhood.

Q And then in the fall of 1964, you get a letter from Mr. Philipzyk's solicitor saying that he wants an account and you reply, in accordance with your letter?

A Yes sir.

Q And then sir, following May or June of '65, you hear about the alleged conversation and you write a letter to the real estate board?

A Yes sir.

Q There were no other dealings between you and Mr.

Q (cont) Philipzyk other than those after he left you?

A No.

Q No?

A Not that I can remember to this date.

Q All right, I would like you to cast your mind back to the occasion following pretty closely the death of Mr. Philipzyk's wife, did Mr. Philipzyk at that time attend on you and request an advance of some \$200 for funeral expenses?

A Well, it was not quite that way sir, he called on me and he asked for a sizeable -

Q Well, first of all can we determine approximately the time?

A Well, shortly after her death.

Q Well, can you tell the Commissioner, do you know when the date of that was?

A Pardon?

Q Do you know the date when that was, approximately?

A No, sir.

Q All right, sir. This was while Mr. Philipzyk was in your employment?

A Yes sir.

Q Go ahead?

A He called in my office while he was in trouble, he used to call on me quite often. I gave him unlimited

A (cont) time, I felt extremely sorry, he was going through a bad stage in life but after Mrs. Philipzyk died, he came into me, he came into see me and I think he told me, I could stand to be corrected, but I think he told me his funeral was costing him \$800. He asked me for this money and I remember one reply that I gave him, I said that I had just buried a life friend and the funeral had cost me \$250. He told me that he wanted the best for his wife. I told him that I felt this was very commendable, but I didn't see why I should have to pay the bill, I did, I told him that I would help him and I gave him \$200.

Q Now, was there some altercation, at that time, where Mr. Philipzyk expressed resentment that you should perhaps comment on what he might spend on the burial of his wife?

A Not in front of me, sir. I don't remember, I don't remember anything of that nature.

Q Were there any observations by you, at that time, following any outburst by Mr. Philipzyk to the effect that if he ever left your company, he would have difficulty in getting a bond --

A No sir.

Q All right sir. Now, did you receive a further letter

Q (cont) from Mr. Haugen, Executive Secretary, Edmonton Real Estate Board, Edmonton Real Estate Board Co-operative Listing Bureau Limited written on the 30th of July, 1965, did you sir?

A Yes sir.

Q And may I have the attachment with it? This is addressed to Kelly Haugen, signed R. J. Philipzyk and the letter reads as follows:

"Mr. H. R. Kellough, President and Managing Director, H. R. Kellough Realty Ltd., 10009 - 101A Avenue, Edmonton, Alberta.

RE: Mr. R. J. Philipzyk

Dear Homer:

The enclosed copies of correspondence were received from the above noted and from his Agent and were read to the Directors at their July 28th meeting. They have asked me to forward same to you for your information and comments.

Yours truly, C.(Kelly) Haugen -
Executive Secretary."

And I also read to you this letter of June 29th, 1965, a letter written to Kelly Haugen, signed Mr. R. J. Philipzyk.

"Mr. Kelly Haugen Edmonton, Real Estate Board.

RE: Complaint H. R. Kellough

Q (cont) Dear Kelly

I do not remember talking to anyone from Kelloughs about money owing to me. What he says about money owing to him is not true and he should not tell other people that it is.

Sincerely R. J. Philipzyk"

LETTER FROM MR. HAUGEN TO
MR. KELLOUGH, MARKED EXHIBIT #22.

COPY OF LETTER FROM MR.
PHILIPZYK TO MR. HAUGEN,
MARKED EXHIBIT #23.

MR. MCGILLIVRAY: And Exhibit #24 sir is a letter from
Mr. Walsh who writes to Mr. Kelly Haugen.

LETTER FROM MR. WALSH TO
MR. HAUGEN, MARKED EXHIBIT #24.

Q MR. MCGILLIVRAY: "Mr. Kelly Haugen, Executive
Secretary, Edmonton Real Estate Board Co-operative
Listing Bureau Limited, 10515 - Princess Elizabeth
Avenue, Edmonton, Alberta.
RE: Complaint H. R. Kellough
Dear Sir,

I enclose letter from Mr. R. J.

Q (cont) Philipzyk regarding the above complaint, which reads as follows - "I do not remember talking to anyone from Kelloughs about money owing to me. What he says about money owing to him is not true and he should not tell other people that it is."

I would like to think that the solution to this complaint would be that the Board would admonish each party to refrain from making any statements about the other, for the future.

In my view it would be unfortunate if the Board should involve itself in a matter concerning advances to salesmen, which of course cannot even be called a commission matter; especially since I have a letter dated December 10th, 1964, in which the board refused to interfere in a matter of commission owing and not paid by an agent to a salesman.

Sincerely. Burton Read Estate,
J. P. Walsh, Manager. "

MR. MCGILLIVRAY: Mr. Commissioner, this is a letter written on September 7th, 1965, Mr. Kellough is this the letter?

A Yes sir.

Q "Mr. Kelly Haugen, Executive Secretary, Edmonton Real Estate Board, 10515 Princess Elizabeth Avenue,

Q (cont) Edmonton, Alberta.

Dear Kelly:

RE: Robert J. Philipzyk

When I received copies of Mr. Philipzyk's and Mr. Walsh's reply to you re my complaint, I did not realize that it required an answer. I can only refer you back to my original complaint. I wish to take this opportunity to make it abundantly clear to you that I am not asking the Board to act as a collection agency, I am merely requesting that this man cease his lies which I notice he does not hesitate to put down on paper. Any reply from Mr. Walsh is between him and the Board; my complaint is against Robert J. Philipzyk. I am not complaining because he does not pay me, but to requote the second paragraph of my original letter: "His employment began with Trotter, McIntyre and Kellough on October 28th, 1960 and he owes that firm \$165.00. He transferred to Kellough Realty on January 10th, 1961 and I am enclosing an exact copy of his ledger sheets which will show you the money that he drew out as against the money he earned. This leaves him owing the company \$1,368.97. There is still one commission that still might come in which you will find on the back sheet amounting to \$142.50, but all

Q (cont) told, I advanced him \$165.00 in the old company for which company he earned nothing, and \$1,368.97 in Kellough Realty, and by having him covered by Aetna he received an additional \$2,564.52, and all this apart from being paid in full for everything he earned."

The point I wish to make is that one of us is lying about the other and I do not believe that ethically a member in good standing can lie about another member in good standing without the board having a look-see. I did not start this but I surely want it stopped.

In closing, I again will mention that my books are open to the Board's auditors at any time.
Very truly yours, H. R. Kellough Realty Ltd.
Homer R. Kellough, President and Managing Director."

LETTER FROM MR. KELLOUGH TO
MR. HAUGEN, MARKED EXHIBIT #25.

Q MR. MCGILLIVRAY: Now, you then received word from the Board and that the directors instructed that the complaint should be heard by the Ethic Committee?

A That is correct.

Q And at that meeting of the Ethic Committee came to

Q (cont) be scheduled for December the 17th, is that correct sir?

A Approximately, I don't remember the exact date.

Q May I have the Board's letter, the Board's letter to Mr. Kellough dated December 6th, 1965. Did you receive this letter sir, dated the 6th of December, 1965, and I believe it is addressed to you;

"Mr. H. R. Kellough, H. R. Kellough Realty Ltd.,
10009 - 101A Avenue, Edmonton, Alberta.

RE: Mr. Robert J. Philipzyk

Dear Homer:

Mr. J. N. Winterburn, F.R.I. Chairman of the Ethics Committee has now been able to set a date at which to hold a hearing on matters at issue between yourself and the above Salesman, now employed with Burton Real Estate.

The date Mr. Winterburn has set, which we trust will be suitable to all parties, is Friday, December 17th, 1965 at 4:00 P.M. in the Board Room of the E. R. E. B. Building.

Yours truly, C. (Kelly) Haugen,
Executive Secretary."

LETTER FROM MR. HAUGEN TO
MR. KELLOUGH, MARKED
EXHIBIT #26.

Q Did you receive that letter, sir?

A Yes sir.

Q Now, prior to the receipt of that letter, did you in these proceedings, you requested that Mrs. Hansen and Mr. Olthius produce in writing their version of what Mr. Philipzyk was supposed to have said, did you do that?

A Yes sir.

Q Why?

A I heard, I will explain it this way, I had been expecting much sooner than this, that this hearing would come up and I heard from Mr. Larsen that Mrs. Hansen was going to the hospital for a very serious operation and that she might not be available for some time. And, I didn't know just when we were going to get the call on this Ethics Committee, or this Ethics Hearing, and if we were called, I have to be ready. I asked, either I telephoned, I think I asked Mr. Larsen, I requested that Mrs. Hansen put in writing everything that she could remember about the conversation.

Q She told us, I believe, she told us that she went in the hospital on the 12th of November, was this letter of the 6th of December the first advice you got that the Ethics Committee would be meeting on the 17th of

Q (cont) December?

A Well, I had heard way earlier that they were trying to get a time for the meeting so, I didn't know just how soon, but I knew that I had to be ready when it was called.

Q Is the letter of the 6th of December the first firm advice as to the date?

A Yes sir, the first firm advice.

Q All right sir. Now, let me take you to the meeting of the Ethics Committee on the 17th of December, 1965. First of all, Mr. Kellough, would you perhaps in your own words tell the Chairman what happened, who was there and how it was set up, in your own words, just what occurred?

A My memory is very foggy sir, not too long after that, I think that I should give this by way of explanation, I went into the hospital with congestive heart failure and emphysema, I wasn't getting enough air or oxygen to orient properly. My memory of everything that took place is certainly vague. There are certain things that stand out but a lot was worrying, a lot of it was repetition, I think that it would have been perhaps a very interesting meeting if -- It would have been interesting if I was feeling better, I can remember the Committee, I can remember everyone who

A (cont) was there, but I can't remember the exact dialogue, I remember parts of the dialogue.

Q Can you tell the Commissioner how things commenced?

A Well, it commenced with a reading of my letter to the board, I read it to the Committee and then --

Q Which letter was that, the one of the --

A The first thing that you read.

Q The one of June the 8th?

A Yes sir.

Q That would be Exhibit 19, sir, and --

A I could be wrong on that sir, but it could have been.

Q On when?

A No, no, it had to be this one.

Q I suppose it could have been the one in September in effect, and I suppose --

A I could have been but this was attached to the letter I read.

Q That is the statement?

A Yes.

Q All right sir, anyway you read the letter, yes?

A That is correct sir.

Q And did anyone have anything to say about that at that point, do you recall?

A I was questioned by Mr. Walsh, I was questioned by

A (cont). the Chairman, there were questions, but I can't remember them, this is a long time ago since --

Q Do you remember, Mr. Kellough, being asked shortly after you had read the letter by the Chairman or someone on the Ethics Committee, what is it that you want Mr. Kellough?

A I think Mr. Walsh in one of the times he was questioning me he seemed to be constantly to infer money here, which I had made it very clear that there was no question of money, money was a written, that money was dead and I think that it was Mr. Walsh that asked me why I wanted, what I wanted, what I was looking for, and I said nothing except I wanted this, I am supposed to have used another term, I don't remember, but I am supposed to have said I want this bastard to quit lying about me.

Q Can you tell us, specifically, I won't labour you with this because the secretary has minutes, but my friend I am sure will ask you some questions further about this, but do you recall somewhere in the course of this meeting, before I ask you that, let's clarify this, what was the form of the meeting, was there a hearing in the sense that there is here, where a witness is sworn and asked questions?

A Very much sir, there could be no faults with the

A (cont) meeting, with the form of the meeting.

Q Well, perhaps the Commissioner will comment on that, sir. What I meant was I just want the form of it, was everybody around the table and there was a discussion or was there a sort of a question and answer sort of a business, or was there formality, a sort of a formality that exists here?

A Well, there was more formality there, I would say, than there is here sir.

Q All right sir. I will try to be more formal.

A Let me make my point clear, I couldn't see anything wrong with the conduct of this, there was a lot of needling that was taking place.

Q Well, what I had in mind sir, perhaps I should say the physical set-up. I suggest to you that everybody was around the board table and anyone was free to ask questions or make statements without in effect witnesses being called?

A No sir, not as I remember it. I had to put on my case and then I was examined on my case and I think, it seems to me, seems to me the witnesses went down to the head or the foot of the table and gave their evidence from there, now, I wouldn't want to be committed to that statement, but that is my impression.

Q All right sir. Well, tell me this, do you recall an

Q (cont) incident where Mr. Larsen, one of your branch managers, stood up and said to Mr. Philipzyk, you can't call me a liar or something like this, and perhaps advanced on him?

A He didn't advance on him, as near as I can remember, what took place was that Mr. Philipzyk called Nels Larsen a liar and Nels Larsen, as I remember, stood up from his chair and said you can't call me a liar and Nels Larsen did not advance on him. He sat down again, and I have a notion that Mr. Philipzyk was a little worried.

Q Well then, as I understood Mr. Olthius' evidence, let me touch on this point, it was about at this point where Mr. Philipzyk left the meeting with Mr. Haugen and I have the impression that he was asked to leave and the executive secretary of the Board sort of escorted him out, was that the way it was?

A May I, I can't interpret this for you, but I can give you my impressions.

Q That is all I want.

A When Mr. Larsen stood up, I think that Mr. Philipzyk felt that he had gone too far in calling him a liar and I think Kelly, Mr. Haugen thought there might be some trouble and he walked out with Mr. Philipzyk, and my impression was that Mr. Philipzyk was leading

A (cont) the way out.

Q All right sir, and --

A But that was just at the end of the meeting, sir.

Q You understand, that when I put questions to you in another way, I am not trying to get a different form of evidence, I am just trying to get the comment that you have to say on the subject, Mr. Kellough?

A Yes sir.

Q Now, after Mr. Philipzyk left, do you recall what was done at the meeting?

A Well, I stood up at that point, and I am convinced that I never sat down again, we were through, we were dismissed. At that point we left, the party with me left and I believe Mr. Philipzyk came back into the meeting after we left, but this I don't know.

Q Now, requested from your counsel that four files had been produced, Mr. Kellough, as your counsel has been advised, I have discussed with Mr. Philipzyk your statement and he thinks that perhaps he has commissions coming that are not disclosed on the statement? He mentioned the five files in particular and I advised him that I would request that they be produced and gone into, in particular what Mr. Philipzyk wonders --

MR. BOWEN:

I wonder on this particular aspect

MR. BOWEN: (cont) of the matter, I have the files here, it is my information that Mr. Kellough did not deal specifically with these files as such. This information, I am informed can better be obtained from the accountant of Mr. Kellough or from the two branch managers which are available. I would suggest if I can table these files now and hand them to my learned friend, and this can be pursued later.

MR. MCGILLIVRAY: This is entirely satisfactory, sir.

Q MR. MCGILLIVRAY: There is one last thing, as far as I'm concerned, Mr. Kellough, you have shown us this statement of what your ledger discloses as to the state of account between you and Mr. Philipzyk?

A Yes sir.

Q Can you say whether Mr. Philipzyk received a monthly statement showing what the balance of account between you was each month?

A Yes sir.

Q Is there some form in which --

A Yes sir.

Q We heard Mr. Philipzyk say that he got some statements, I mean Mr. Olthius say that he got some statements; was this effective when the company first --

A It goes back 25 years with me, sir.

Q Again sir, can you tell me the, can you tell the

Q (cont) Commissioner whether these statements are copies of what was given to Mr. Philipzyk, monthly, or would this be your branch manager or accountant who would have the first knowledge?

A I think they should deal with them, sir.

Q You don't have any first-hand knowledge with them, sir.

A No.

Q Very well. Perhaps Mr. Kellough you would be good enough to answer my learned friend?


THE COMMISSIONER: Mr. McGillivray, are you done?

MR. MCGILLIVRAY: Yes sir.


THE COMMISSIONER: Perhaps we should adjourn.

HEARING ADJOURNED TO JUNE 24, 1970.

Certified a Correct Transcript.



Marlene Ertman,
Official Court Reporter.
(Pages 1 to 73)



R. L'Heureux,
Official Court Reporter.
(Pages 73 to 136)

EDMONTON, Alberta.
July 9, 1970.
ej/

[illegible][illegible][illegible]

Alberta. Commission to Inquire into
the Submission of the Ombudsman.
Transcript of the evidence and pro-
ceedings

CA2A12 1-69021 v.2

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